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<div>Page 1</div> <div>UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK -----X SANTOS HERNANDEZ, EMANUEL DE JESUS LIEVANO and MIGUEL ANTONIO VASQUEZ, Plaintiffs, -against- Case No. 20-CV-4026 ROSSO UPTOWN, LTD., MICHELE TIZZANO s/h/a MICHAEL TIZZANO and MASSIMO GAMMELLA, Defendants. -----X 200 Broad Hollow Road Melville, New York June 3, 2022 10:00 a.m. DEPOSITION Pro Se of the Defendant, MICHELE TIZZANO s/h/a MICHAEL TIZZANO, taken by the Plaintiff, pursuant to Order, held at the above-mentioned time and place, before Grace Nuccio, a Notary Public of the State of New York.</div>	<div>Page 3</div> <div>1 2 FEDERAL STIPULATIONS 3 4 IT IS HEREBY STIPULATED AND AGREED by and 5 between the attorneys for the respective parties 6 herein, that the sealing, filing and certification 7 of the within deposition be waived; that such 8 deposition may be signed and sworn to before any 9 officer authorized to administer and oath, with 10 the same force and effect as if signed and sworn 11 to before the officer before whom said deposition 12 is taken. 13 IT IS FURTHER STIPULATED AND AGREED that all 14 objections, except as to form, are reserved to the 15 time of trial. 16 17 18 19 20 21 22 23 24 25 *****</div>
<div>Page 2</div> <div>1 2 A P P E A R A N C E S: 3 MOSER LAW FIRM, P.C. 4 Attorneys for Plaintiffs 5 5 East Main Street 6 Huntington, New York 11743 7 BY: STEVEN JOHN MOSER, ESQ. 8 File No. 18-00021 9 10 11 12 13 14 15 A L S O P R E S E N T: 16 MOSER LAW FIRM, P.C. 17 BY: SHIRLEY NAVARRO-LOSITO, Paralegal 18 19 20 21 22 23 24 25 * * * *</div>	<div>Page 4</div> <div>1 -Michele Tizzano- 2 MICHELE TIZZANO, 3 called as a witness pro se, having 4 been first duly sworn, was examined 5 and testified as follows: 6 BY THE REPORTER: 7 Q. Please state your name for the 8 record. 9 A. Michele Tizzano. 10 Q. Please state your address for the 11 record. 12 A. Home address is 44 Sintsink Drive 13 East, Apartment E, Port Washington, New York 14 11050. 15 EXAMINATION BY 16 MR. MOSER: 17 Q. Good morning, Mr. Tizzano. My name 18 is Steve Moser and I'm not sure if we've met 19 before. I believe we may have met in court once 20 but I'm not sure. 21 A. I think I just crossed you. I didn't 22 know it was you. 23 Q. I represent three individuals who are 24 suing Rosso Uptown, you and Massimo Gammella for 25 violations of the New York Labor Law and the Fair</div>

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<p>1 -Michele Tizzano-</p> <p>2 Labor Standards Act.</p> <p>3 I'm going to have some questions for</p> <p>4 you today. If you don't the question, don't</p> <p>5 answer it. You let me know and I will make the</p> <p>6 question understandable for you. I'll repeat it</p> <p>7 as many times as necessary so that you fully</p> <p>8 understand the question before you answer it.</p> <p>9 Is that okay?</p> <p>10 A. It's okay.</p> <p>11 Q. Have you ever testified at a</p> <p>12 deposition before?</p> <p>13 A. Once.</p> <p>14 Q. When was that?</p> <p>15 A. During my divorce.</p> <p>16 Q. How many years ago was that?</p> <p>17 A. 2017.</p> <p>18 Q. Have you been known by any other name</p> <p>19 other than Michele Tizzano?</p> <p>20 A. Yes.</p> <p>21 Q. What other names have you been known</p> <p>22 by?</p> <p>23 A. Michael.</p> <p>24 Q. And that would Michael Tizzano?</p> <p>25 A. Yes.</p>	<p>1 -Michele Tizzano-</p> <p>2 Q. What's the name of that restaurant?</p> <p>3 A. Pepe Rosso 24 Inc.</p> <p>4 Q. What is your job title at Pepe Rosso?</p> <p>5 A. I'm the owner.</p> <p>6 Q. How long have you been the owner of</p> <p>7 Pepe Rosso 24, Inc.?</p> <p>8 A. Since 2010.</p> <p>9 Q. May I refer to Pepe Rosso 24, Inc. as</p> <p>10 Pepe Rosso?</p> <p>11 A. Mm-hmm, yes, you can.</p> <p>12 Q. What do you do at Pepe Rosso?</p> <p>13 A. I watch over the restaurant's</p> <p>14 operation.</p> <p>15 Q. Do you have any partners?</p> <p>16 A. Yes.</p> <p>17 Q. What are the names of your partners?</p> <p>18 A. Massimo Gammella.</p> <p>19 Q. Besides Mr. Gammella, do you have any</p> <p>20 other partners at Pepe Rosso?</p> <p>21 A. No.</p> <p>22 Q. Do you manage any other restaurants</p> <p>23 other than Pepe Rosso?</p> <p>24 A. No.</p> <p>25 Q. Do you own any other restaurants</p>
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<p>1 -Michele Tizzano-</p> <p>2 Q. Beside Michael Tizzano and Michele</p> <p>3 Tizzano, have you been known by any other names?</p> <p>4 A. No.</p> <p>5 Q. Do you have a twin brother or a</p> <p>6 sister?</p> <p>7 A. No.</p> <p>8 Q. Have you ever been the victim of</p> <p>9 identity theft?</p> <p>10 A. It could be.</p> <p>11 Q. Do you recall specifically any</p> <p>12 incident in which someone stole your identity?</p> <p>13 A. No.</p> <p>14 Q. To your knowledge, has anyone ever</p> <p>15 pretended to be you?</p> <p>16 A. No.</p> <p>17 Q. Have you ever given permission to</p> <p>18 someone else to pretend to be you?</p> <p>19 A. No.</p> <p>20 Q. I'm just going to go over your</p> <p>21 employment history for the past ten years.</p> <p>22 Are you currently employed now?</p> <p>23 A. Yes.</p> <p>24 Q. Where are you employed?</p> <p>25 A. At a restaurant.</p>	<p>1 -Michele Tizzano-</p> <p>2 other than Pepe Rosso?</p> <p>3 A. No.</p> <p>4 Q. Have you managed any restaurants</p> <p>5 other than Pepe Rosso in the past ten years?</p> <p>6 A. What do you mean by manage?</p> <p>7 Q. Let me ask it a different way.</p> <p>8 Have you had any ownership interest</p> <p>9 in any businesses other than Pepe Rosso in the</p> <p>10 past ten years?</p> <p>11 A. No.</p> <p>12 Q. Have you ever helped anyone else run</p> <p>13 a restaurant in the past ten years?</p> <p>14 A. Yes.</p> <p>15 Q. Whom did you help run a restaurant?</p> <p>16 A. I do consulting. So I've helped</p> <p>17 several restaurants.</p> <p>18 Q. What type of consulting do you do?</p> <p>19 A. I help with menus, recipes, training</p> <p>20 wait staff, decor, relationship with vendors.</p> <p>21 Q. Is there a company that does that or</p> <p>22 is that just you individually?</p> <p>23 A. Only me individually.</p> <p>24 Q. How long have you been doing this</p> <p>25 consulting work?</p>

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<p>1 -Michele Tizzano-</p> <p>2 A. I would not define it as consulting</p> <p>3 work. It's if somebody calls me, I offer if I can</p> <p>4 help; fine. So...</p> <p>5 Q. What restaurants have you done this</p> <p>6 work for in the past ten years?</p> <p>7 A. There was a pizzeria up in</p> <p>8 Connecticut and a restaurant in Rockville Centre.</p> <p>9 Q. What was the name of the pizzeria in</p> <p>10 Connecticut?</p> <p>11 A. Grimaldi's.</p> <p>12 Q. Do you know the address of that?</p> <p>13 A. I do not remember.</p> <p>14 Q. Do you remember the city it was in?</p> <p>15 A. Woodbridge.</p> <p>16 Q. Who was your contact at Grimaldi's?</p> <p>17 A. The owner's name was I believe Tony</p> <p>18 Piscina (phonetic). The restaurant is closed now.</p> <p>19 Q. What was the name of the restaurant</p> <p>20 in Rockville Centre that you did the consulting</p> <p>21 for?</p> <p>22 A. Habanero.</p> <p>23 Q. Is Habanero still in business?</p> <p>24 A. Yes.</p> <p>25 Q. Have you ever told anybody that you</p>	<p>1 -Michele Tizzano-</p> <p>2 A. Yes.</p> <p>3 Q. Do you currently have any ownership</p> <p>4 in any business other than Pepe Rosso?</p> <p>5 A. No.</p> <p>6 Q. Have you owned any business other</p> <p>7 than Pepe Rosso in the past ten years?</p> <p>8 A. No.</p> <p>9 Q. Are you familiar with a business</p> <p>10 called Rosso Uptown, Limited?</p> <p>11 A. Yes.</p> <p>12 Q. What is Rosso Uptown, Limited?</p> <p>13 A. It was a restaurant.</p> <p>14 Q. Where was that restaurant located?</p> <p>15 A. Main Street in Port Washington.</p> <p>16 Q. Did you ever work at Rosso Uptown?</p> <p>17 A. No.</p> <p>18 Q. How do you know that Rosso Uptown,</p> <p>19 Limited was a restaurant that did business that</p> <p>20 was located on Main Street?</p> <p>21 A. Because it's owned by my partner.</p> <p>22 Q. When you say your partner, we're</p> <p>23 speaking about Massimo Gammella?</p> <p>24 A. Yes.</p> <p>25 Q. Did Rosso Uptown, Limited do business</p>
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<p>1 -Michele Tizzano-</p> <p>2 were the manager of Habanero?</p> <p>3 A. Yes.</p> <p>4 Q. Whom did you tell that you were the</p> <p>5 manager of Habanero?</p> <p>6 A. Define manager because --</p> <p>7 Q. I'm not talking about your definition</p> <p>8 of manager or my definition of manager or anyone</p> <p>9 else's definition of manager. I just want to know</p> <p>10 if you told anyone at any time that you were the</p> <p>11 manager of Habanero.</p> <p>12 A. I might have.</p> <p>13 Q. Who might you have told that you were</p> <p>14 the manager?</p> <p>15 A. Some customer.</p> <p>16 Q. Other than perhaps a customer, would</p> <p>17 you have told anyone else that you were the</p> <p>18 manager of Habanero?</p> <p>19 A. No.</p> <p>20 Q. You mentioned that the pizzeria in</p> <p>21 Connecticut, Grimaldi's, is out of business,</p> <p>22 correct?</p> <p>23 A. I believe so.</p> <p>24 Q. These are the only two businesses</p> <p>25 that you helped in the past ten years?</p>	<p>1 -Michele Tizzano-</p> <p>2 as Rosso Uptown?</p> <p>3 A. Yes.</p> <p>4 Q. Did it do business under any other</p> <p>5 names other than Rosso Uptown?</p> <p>6 A. He changed identity three times.</p> <p>7 Q. What was its first identity?</p> <p>8 A. Rosso Uptown.</p> <p>9 Q. When was it identified as Rosso</p> <p>10 Uptown?</p> <p>11 A. In terms of the time?</p> <p>12 Q. Approximately, yes.</p> <p>13 A. I don't know when he opened; 2015.</p> <p>14 Q. Is that an approximation?</p> <p>15 A. Yeah, probably.</p> <p>16 Q. When did it change from Rosso Uptown</p> <p>17 to something else?</p> <p>18 A. Exactly I would not know.</p> <p>19 Q. What did it change to next?</p> <p>20 A. Osteria, the Brick Osteria.</p> <p>21 Q. When did it change from Rosso Uptown</p> <p>22 change to Brick Osteria?</p> <p>23 A. I would not know.</p> <p>24 Q. Did it change from Brick Osteria to</p> <p>25 something else?</p>

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<p>1 -Michele Tizzano-</p> <p>2 A. Yes.</p> <p>3 Q. What did it change to?</p> <p>4 A. 11 Zero 50.</p> <p>5 Q. Other than Rosso Uptown, Brick</p> <p>6 Osteria and 11 Zero 50, did Rosso Uptown, Limited</p> <p>7 do business under any other names?</p> <p>8 A. No.</p> <p>9 Q. How do you know this information</p> <p>10 about Rosso Uptown, Limited?</p> <p>11 A. Through my partner.</p> <p>12 Q. Is it based upon your conversations</p> <p>13 with him?</p> <p>14 A. Yes.</p> <p>15 Q. Other than your conversations with</p> <p>16 Massimo Gammella, is your knowledge regarding</p> <p>17 Rosso Uptown, Limited based on anything else?</p> <p>18 A. Can you rephrase that?</p> <p>19 Q. You testified briefly today that</p> <p>20 there was this business Rosso Uptown, Limited</p> <p>21 located on Main Street in Port Washington and you</p> <p>22 mentioned that it did business under three</p> <p>23 names -- Rosso Uptown, Brick Osteria and 11 Zero</p> <p>24 50 -- and this information you know through your</p> <p>25 partner, Massimo Gammella.</p>	<p>1 -Michele Tizzano-</p> <p>2 to how many different times you helped out at</p> <p>3 Rosso Uptown?</p> <p>4 A. I can't.</p> <p>5 Q. Can you say if you helped out less</p> <p>6 than a hundred times?</p> <p>7 A. Yes.</p> <p>8 Q. Can you say whether it was less than</p> <p>9 50 times?</p> <p>10 A. It could be.</p> <p>11 Q. Other than being less than a hundred,</p> <p>12 can you give me any other approximation of how</p> <p>13 many times you helped out at Rosso Uptown?</p> <p>14 A. I cannot approximate.</p> <p>15 Q. How would you help out at Rosso</p> <p>16 Uptown?</p> <p>17 A. If he was short of a waiter, I would</p> <p>18 pitch in. If he needed a driver, I would do</p> <p>19 deliveries. If he needed a cook, I would cook.</p> <p>20 Q. Other than pitching in as a waiter, a</p> <p>21 driver or a cook, did you help out in any other</p> <p>22 way at Rosso Uptown?</p> <p>23 A. Maybe I brought stuff from one</p> <p>24 restaurant to another if he was short of</p> <p>25 something.</p>
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<p>1 -Michele Tizzano-</p> <p>2 A. Mm-hmm.</p> <p>3 Q. My question is: Other than Massimo</p> <p>4 Gammella telling you this, was there any other way</p> <p>5 that you knew these particular facts?</p> <p>6 A. No.</p> <p>7 Q. For the purposes of this deposition,</p> <p>8 when I use the term Rosso Uptown, I'm going to</p> <p>9 mean Rosso Uptown, Limited and any trade name that</p> <p>10 it did business under. Do you understand that?</p> <p>11 A. Yes.</p> <p>12 Q. Did you ever supervise employees of</p> <p>13 Rosso Uptown?</p> <p>14 A. No.</p> <p>15 Q. Did you ever work at Rosso Uptown?</p> <p>16 A. I might have helped Massimo, yes.</p> <p>17 Q. When you say you might have helped,</p> <p>18 when might you have helped?</p> <p>19 A. Whenever he needed me. It was not on</p> <p>20 an ongoing basis.</p> <p>21 Q. Do you recall how many times you</p> <p>22 worked at Rosso Uptown?</p> <p>23 A. The specific numbers, no. And if it</p> <p>24 was, it was maybe an hour or two hours.</p> <p>25 Q. Can you give me any approximation as</p>	<p>1 -Michele Tizzano-</p> <p>2 Q. What other restaurant would you bring</p> <p>3 things from?</p> <p>4 A. From Pepe Rosso.</p> <p>5 Q. What types of items would you bring?</p> <p>6 A. Regular food items if he was short of</p> <p>7 bread or if he needed sugar or flour.</p> <p>8 Q. When you brought the food items from</p> <p>9 Pepe Rosso to Rosso Uptown, would Rosso Uptown pay</p> <p>10 Pepe Rosso for those items?</p> <p>11 A. He would replace the items.</p> <p>12 Q. So it would be a loan?</p> <p>13 A. Yes.</p> <p>14 Q. Then Rosso Uptown would then after</p> <p>15 purchasing additional stuff give it to back to</p> <p>16 Pepe Rosso?</p> <p>17 A. Yes.</p> <p>18 Q. On how many occasions were food items</p> <p>19 brought from Pepe Rosso to Rosso Uptown?</p> <p>20 A. Very rarely.</p> <p>21 Q. Did Pepe Rosso and Rosso Uptown share</p> <p>22 any common employees?</p> <p>23 A. No.</p> <p>24 Q. Was there any worker who ever worked</p> <p>25 at both Pepe Rosso and Rosso Uptown?</p>

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<p>1 -Michele Tizzano-</p> <p>2 A. Simultaneously?</p> <p>3 Q. Yes.</p> <p>4 A. No.</p> <p>5 Q. Other than simultaneously, was there</p> <p>6 ever an individual who worked for both Rosso</p> <p>7 Uptown and Pepe Rosso?</p> <p>8 A. I think so.</p> <p>9 Q. Do you know how many individuals</p> <p>10 would have worked for both Rosso Uptown and Pepe</p> <p>11 Rosso at any time?</p> <p>12 A. Maybe one.</p> <p>13 Q. Do you recall the name of that</p> <p>14 individual?</p> <p>15 A. No.</p> <p>16 Q. Were you ever an owner of Rosso</p> <p>17 Uptown?</p> <p>18 A. No.</p> <p>19 Q. Were you ever a joint owner and</p> <p>20 manager of Rosso Uptown?</p> <p>21 A. No.</p> <p>22 Q. Did you ever own any shares in Rosso</p> <p>23 Uptown?</p> <p>24 A. No.</p> <p>25 Q. Did you ever tell anyone that you</p>	<p>1 -Michele Tizzano-</p> <p>2 restaurant does well, it does change an entity</p> <p>3 three times.</p> <p>4 Q. Would you say that from the time</p> <p>5 Rosso Uptown opened until it closed that Massimo</p> <p>6 was having difficulties at that restaurant?</p> <p>7 A. Yes.</p> <p>8 Q. How many times did you tell people</p> <p>9 that you were a manager of Rosso Uptown?</p> <p>10 A. Maybe a few times. I can't pinpoint</p> <p>11 exactly how many times.</p> <p>12 Q. Other than Massimo having</p> <p>13 difficulties at that restaurant, is there any</p> <p>14 other reason why you would tell customers that you</p> <p>15 were a manager of Rosso Uptown?</p> <p>16 A. No.</p> <p>17 Q. Where were these customers?</p> <p>18 A. What?</p> <p>19 Q. The customers that you told that you</p> <p>20 were the manager of Rosso Uptown to, were those</p> <p>21 customers at Pepe Rosso or Rosso Uptown?</p> <p>22 A. Well, we live in a small town. So</p> <p>23 most probably.</p> <p>24 Q. Most probably --</p> <p>25 A. Restaurants share customers. Now, if</p>
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<p>1 -Michele Tizzano-</p> <p>2 were a manager of Rosso Uptown?</p> <p>3 A. It could be.</p> <p>4 Q. Whom would you have told that you</p> <p>5 were a manager of Rosso Uptown?</p> <p>6 A. Customers.</p> <p>7 Q. Why would you tell customers that you</p> <p>8 were a manager Rosso Uptown?</p> <p>9 A. Especially when Massimo was in</p> <p>10 difficulties.</p> <p>11 Q. So that would relate to the timing of</p> <p>12 when you would tell people that you were a manager</p> <p>13 of Rosso Uptown?</p> <p>14 A. Can you rephrase that?</p> <p>15 Q. My question was: Why did you tell</p> <p>16 customers that you were a manager of Rosso Uptown?</p> <p>17 A. Because there was a time that Massimo</p> <p>18 was in difficulties and I thought that it could</p> <p>19 have benefits from customers knowing that I was</p> <p>20 part of the -- you know, that I was managing the</p> <p>21 restaurant.</p> <p>22 Q. What do you mean when you say the</p> <p>23 times that Massimo was in difficulties?</p> <p>24 A. Well, we just stated that Rosso</p> <p>25 Uptown changed identities for three times. If a</p>	<p>1 -Michele Tizzano-</p> <p>2 they were Pepe Rosso's customers or other</p> <p>3 customers, it's hard to say.</p> <p>4 Q. Did you ever tell customers while you</p> <p>5 were at Pepe Rosso that you were the manager of</p> <p>6 Rosso Uptown?</p> <p>7 A. Yes.</p> <p>8 Q. On how many occasions?</p> <p>9 A. I could not pinpoint.</p> <p>10 Q. Could you whether it was more than 20</p> <p>11 times or less than 20 times?</p> <p>12 A. I would not know.</p> <p>13 Q. So it could be more than more than 20</p> <p>14 or it could be less than 20?</p> <p>15 A. Mr. Moser, I don't want to guess.</p> <p>16 Q. Did you tell customers at Pepe Rosso</p> <p>17 fewer than a hundred times that you were the</p> <p>18 manager Rosso Uptown?</p> <p>19 A. I'm not doing a guessing game with</p> <p>20 you, Mr. Moser.</p> <p>21 Q. So it could have been more than a</p> <p>22 hundred or it could have been less than a hundred;</p> <p>23 we don't know?</p> <p>24 A. We don't know.</p> <p>25 Q. Let talk about times that you told</p>

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<p style="text-align: right;">Page 21</p> <p>1 -Michele Tizzano-</p> <p>2 customers at Rosso Uptown that you were the</p> <p>3 manager of Rosso Uptown. On how many occasions</p> <p>4 did you tell individuals at Rosso Uptown that you</p> <p>5 managed Rosso Uptown?</p> <p>6 A. What are we talking; now we're</p> <p>7 talking about Rosso Uptown before?</p> <p>8 Q. We were talking about Pepe Rosso.</p> <p>9 So my question before -- let me</p> <p>10 clarify and maybe I need to correct myself but my</p> <p>11 question before was: When you were at Pepe Rosso,</p> <p>12 did you tell customers that you were the manager</p> <p>13 of Rosso Uptown?</p> <p>14 A. Okay, for me to understand, your</p> <p>15 question now is while I was working at Pepe Rosso,</p> <p>16 have I said that I was a manager at Rosso Uptown?</p> <p>17 Q. Correct, thank you.</p> <p>18 A. Because before you were not clear.</p> <p>19 Q. Okay, thank you.</p> <p>20 A. I would not know how many times I</p> <p>21 told customers at Pepe Rosso that I was somehow</p> <p>22 managing Uptown.</p> <p>23 Q. How about when you were at Rosso</p> <p>24 Uptown, do you recall how many times you told</p> <p>25 customers at Rosso Uptown that you were the</p>	<p style="text-align: right;">Page 23</p> <p>1 -Michele Tizzano-</p> <p>2 the location, did you tell him anything else?</p> <p>3 A. If he was asking, yes.</p> <p>4 Q. What other subjects did you advise</p> <p>5 Massimo Gammella on when it came to Rosso Uptown?</p> <p>6 A. Can you rephrase that?</p> <p>7 Q. You mentioned that you gave advice to</p> <p>8 him and part of that advice was do not take the</p> <p>9 location. Did you give him any other advice about</p> <p>10 Rosso Uptown?</p> <p>11 A. It depended on what he was asking me</p> <p>12 for.</p> <p>13 Q. What did he ask you?</p> <p>14 A. You have to ask him.</p> <p>15 Q. Do you recall anything that he asked</p> <p>16 you or anything that you told him other than do</p> <p>17 not take the location?</p> <p>18 A. If he was asking for specific advice,</p> <p>19 I might have said something, yes.</p> <p>20 Q. Do you recall any specific instance</p> <p>21 in which you gave Massimo advice about Rosso</p> <p>22 Uptown other than that time that you told him do</p> <p>23 not take the location?</p> <p>24 A. I think you are repeating the</p> <p>25 question; and yes, I did.</p>
<p style="text-align: right;">Page 22</p> <p>1 -Michele Tizzano-</p> <p>2 manager of Rosso Uptown?</p> <p>3 A. No.</p> <p>4 Q. Can you give me any approximation</p> <p>5 whatsoever?</p> <p>6 A. No, Mr. Moser, I can't.</p> <p>7 Q. For what purpose did you tell people</p> <p>8 that you were the manager of Rosso Uptown?</p> <p>9 A. I beg your pardon?</p> <p>10 Q. For what purpose did you tell people</p> <p>11 that you were the manager of Rosso Uptown?</p> <p>12 A. I thought that Massimo could benefit</p> <p>13 if people knew that I was doing a job there, that</p> <p>14 I was working there.</p> <p>15 Q. Did you have any role in the</p> <p>16 formation of Rosso Uptown?</p> <p>17 A. Can you define role?</p> <p>18 Q. Did you do anything to help Massimo</p> <p>19 start the business?</p> <p>20 A. If he was asking for advice, yes.</p> <p>21 Q. Did he ask you for advice?</p> <p>22 A. Yes.</p> <p>23 Q. What advice did you give him?</p> <p>24 A. Do not take the location.</p> <p>25 Q. Other than telling him do not take</p>	<p style="text-align: right;">Page 24</p> <p>1 -Michele Tizzano-</p> <p>2 Q. What other things did you tell him or</p> <p>3 advise him on?</p> <p>4 A. Maybe the food, what he should do;</p> <p>5 the decor that he should apply.</p> <p>6 Q. So you had input into the menu?</p> <p>7 A. No.</p> <p>8 Q. Did you give him advice on what to do</p> <p>9 with the menu?</p> <p>10 A. Yes.</p> <p>11 Q. Did you give him advice on what to do</p> <p>12 with the design?</p> <p>13 A. Yes.</p> <p>14 Q. Did you ever have any access to the</p> <p>15 business records of Rosso Uptown?</p> <p>16 A. No.</p> <p>17 Q. Other than customers, did you ever</p> <p>18 tell anyone else that you were the manager of</p> <p>19 Rosso Uptown?</p> <p>20 A. No.</p> <p>21 Q. Were you ever a signatory on any</p> <p>22 Rosso Uptown bank accounts?</p> <p>23 A. Never.</p> <p>24 Q. Did you ever hire any Rosso Uptown</p> <p>25 employees?</p>

6 (Pages 21 to 24)

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Page 25	Page 27
<p>1 -Michele Tizzano-</p> <p>2 A. No.</p> <p>3 Q. Did you ever fire any Rosso Uptown</p> <p>4 employees?</p> <p>5 A. No.</p> <p>6 Q. Who did all the hiring and firing at</p> <p>7 Rosso Uptown?</p> <p>8 A. Massimo, Massimo.</p> <p>9 Q. And by Massimo, you mean Massimo</p> <p>10 Gammella?</p> <p>11 A. Yes.</p> <p>12 Q. Who managed the day-to-day operations</p> <p>13 of Rosso Uptown?</p> <p>14 A. Besides Massimo, there was a guy that</p> <p>15 worked there.</p> <p>16 Q. How much time did Massimo spend at</p> <p>17 Rosso Uptown when it was open?</p> <p>18 A. Obviously not much.</p> <p>19 Q. Who managed the day-to-day operations</p> <p>20 of Rosso Uptown other than Massimo?</p> <p>21 A. I knew of one guy only.</p> <p>22 Q. Who was that guy?</p> <p>23 A. It was a Brazilian guy.</p> <p>24 Q. Do you know an individual by the name</p> <p>25 of Santos Hernandez?</p>	<p>1 -Michele Tizzano-</p> <p>2 I referred to him in a rude manner. Massimo</p> <p>3 showed him the summons, the complaint, with his</p> <p>4 name on it and he said that he had nothing to do</p> <p>5 with it. That was the core of the conversation.</p> <p>6 Q. Was he looking for a job when he went</p> <p>7 to Pepe Rosso?</p> <p>8 A. No.</p> <p>9 Q. Why did you go to Pepe Rosso?</p> <p>10 A. He got food for his girlfriend.</p> <p>11 Q. Did Emanuel De Jesus Lievano ever</p> <p>12 work for Pepe Rosso?</p> <p>13 A. He might have.</p> <p>14 Q. When might he have worked for Pepe</p> <p>15 Rosso?</p> <p>16 A. I do not remember. Maybe during the</p> <p>17 pandemic.</p> <p>18 Q. Did Emanuel De Jesus Lievano ever</p> <p>19 work for Rosso Uptown?</p> <p>20 A. Yes.</p> <p>21 Q. When did he work for Rosso Uptown?</p> <p>22 A. A specific time I don't know.</p> <p>23 Q. Did you ever manage him?</p> <p>24 A. No.</p> <p>25 Q. Do you know an individual by the name</p>
Page 26	Page 28
<p>1 -Michele Tizzano-</p> <p>2 A. No. Did he go with another name? Do</p> <p>3 you have a picture?</p> <p>4 Q. Do you know an individual by the name</p> <p>5 of Emanuel De Jesus Lievano?</p> <p>6 A. I might.</p> <p>7 Q. How might you know him?</p> <p>8 A. Because he stopped at Pepe Rosso</p> <p>9 about maybe a month ago.</p> <p>10 Q. Did you record him when he stopped at</p> <p>11 Pepe Rosso a month ago?</p> <p>12 A. Massimo did.</p> <p>13 Q. Did you listen to that recording?</p> <p>14 A. Yes.</p> <p>15 Q. Is that recording in English or</p> <p>16 Spanish or a combination?</p> <p>17 A. I don't remember. I think Spanish.</p> <p>18 Q. Does Massimo speak some Spanish?</p> <p>19 A. He does.</p> <p>20 Q. Do you speak some Spanish?</p> <p>21 A. I think I do.</p> <p>22 Q. What was the sum and substance of</p> <p>23 what was recorded?</p> <p>24 A. Basically Massimo told him what the</p> <p>25 heck are you doing here. The guy was surprised.</p>	<p>1 -Michele Tizzano-</p> <p>2 of Miguel Antonio Vasquez?</p> <p>3 A. It could be.</p> <p>4 Q. How would you know Miguel Antonio</p> <p>5 Vasquez?</p> <p>6 A. Because I think he works at Pepe</p> <p>7 Rosso with us.</p> <p>8 Q. Has Miguel Antonio Vasquez spoken to</p> <p>9 either you or Mr. Gammella about this lawsuit?</p> <p>10 A. No.</p> <p>11 Q. Did Miguel Antonio Vasquez indicate</p> <p>12 to either of you whether he wants to continue this</p> <p>13 lawsuit?</p> <p>14 A. No.</p> <p>15 Q. Did you ever ask him anything about</p> <p>16 this lawsuit?</p> <p>17 A. Do you mean me personally or Massimo?</p> <p>18 Q. You personally.</p> <p>19 A. No.</p> <p>20 Q. Did Massimo ever him anything about</p> <p>21 this lawsuit?</p> <p>22 A. You have to ask Massimo.</p> <p>23 Q. When you were presented with the</p> <p>24 summons and complaint in this case, did you see</p> <p>25 Miguel Antonio Vasquez's name on it?</p>

7 (Pages 25 to 28)

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<p>1 -Michele Tizzano-</p> <p>2 A. Yes.</p> <p>3 Q. Was he an employee of yours at that</p> <p>4 time?</p> <p>5 A. It could be, yes.</p> <p>6 Q. Is there a particular reason why you</p> <p>7 didn't ask him about the lawsuit?</p> <p>8 A. Yes.</p> <p>9 Q. What was that reason?</p> <p>10 A. Because these people they go by</p> <p>11 different names and I wasn't sure.</p> <p>12 Q. How do you know it's him now?</p> <p>13 A. Because you told me so.</p> <p>14 Q. Is it fair to say that if these three</p> <p>15 individuals worked for Rosso Uptown that you</p> <p>16 wouldn't know who hired them?</p> <p>17 A. You mean the three of them?</p> <p>18 Q. Yes.</p> <p>19 A. Yes, that is fair.</p> <p>20 Q. Is it also fair to say that if these</p> <p>21 three individuals worked for Rosso Uptown that you</p> <p>22 wouldn't know when they stopped working there?</p> <p>23 A. Not necessarily.</p> <p>24 Q. How would you know when they stopped</p> <p>25 working?</p>	<p>1 -Michele Tizzano-</p> <p>2 Q. Do you have any personal knowledge</p> <p>3 regarding Mr. Hernandez's work schedule when he</p> <p>4 was at Rosso Uptown?</p> <p>5 A. No.</p> <p>6 Q. Do you have any personal knowledge</p> <p>7 regarding Mr. Lievano's work schedule when he was</p> <p>8 at Rosso Uptown?</p> <p>9 A. No.</p> <p>10 Q. Do you have any knowledge about</p> <p>11 Mr. Vasquez's schedule when he was at Rosso</p> <p>12 Uptown?</p> <p>13 A. No.</p> <p>14 Q. Did you ever talk to Mr. Gammella</p> <p>15 about this lawsuit?</p> <p>16 A. Yes.</p> <p>17 Q. How many times did you speak to</p> <p>18 Mr. Gammella about this lawsuit?</p> <p>19 A. Is that a serious question? Is this</p> <p>20 a serious question?</p> <p>21 Q. Yes.</p> <p>22 A. 25 times.</p> <p>23 Q. Did you ask him whether these three</p> <p>24 individuals who were suing you worked at Rosso</p> <p>25 Uptown?</p>
Page 30	Page 32
<p>1 -Michele Tizzano-</p> <p>2 A. Especially when the restaurant</p> <p>3 changed the identity for the third time, I know</p> <p>4 because it was a different concept; and according</p> <p>5 to Massimo, they were not suitable to execute the</p> <p>6 new menu.</p> <p>7 Q. Do you know when Mr. Hernandez</p> <p>8 started working or stopped working for Rosso</p> <p>9 Uptown?</p> <p>10 A. No.</p> <p>11 Q. Do you know when Mr. Lievano started</p> <p>12 working or stopped working for Rosso Uptown?</p> <p>13 A. No.</p> <p>14 Q. Do you know when Mr. Vasquez started</p> <p>15 working or stopped working for Rosso Uptown?</p> <p>16 A. No.</p> <p>17 Q. Do you know how much Mr. Hernandez</p> <p>18 was paid when he worked for Rosso Uptown?</p> <p>19 A. No.</p> <p>20 Q. Do you know how much Mr. Lievano was</p> <p>21 paid when he worked for Rosso Uptown?</p> <p>22 A. No.</p> <p>23 Q. Do you know how much Mr. Vasquez was</p> <p>24 paid when he worked for Rosso Uptown?</p> <p>25 A. No.</p>	<p>1 -Michele Tizzano-</p> <p>2 A. Yes.</p> <p>3 Q. What did he say?</p> <p>4 A. That he might recognize two of them.</p> <p>5 Q. Do you recall any other conversations</p> <p>6 that you had with Mr. Gammella about this lawsuit?</p> <p>7 A. Besides the 25 times that we spoke</p> <p>8 about it?</p> <p>9 Q. Well, those are the numbers of times</p> <p>10 but I want to know generally what you spoke about.</p> <p>11 A. The specifics?</p> <p>12 Q. As best you can recall.</p> <p>13 A. Yes, what should we do about this</p> <p>14 now.</p> <p>15 Q. Did you ever receive any compensation</p> <p>16 from Rosso Uptown?</p> <p>17 A. No.</p> <p>18 Q. Did you ever enter into any contracts</p> <p>19 with Rosso Uptown?</p> <p>20 A. No.</p> <p>21 Q. Did you ever do any promotional work</p> <p>22 for Rosso Uptown?</p> <p>23 A. Yes.</p> <p>24 Q. What promotional work did you do for</p> <p>25 Rosso Uptown?</p>

8 (Pages 29 to 32)

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<p>1 -Michele Tizzano-</p> <p>2 A. Social media.</p> <p>3 Q. What type of social media?</p> <p>4 A. Facebook, Instagram.</p> <p>5 Q. Were you collecting a percentage of</p> <p>6 any of the earnings of Rosso Uptown?</p> <p>7 A. No.</p> <p>8 Q. Were you getting paid for any of the</p> <p>9 work that you did for Rosso Uptown?</p> <p>10 A. No.</p> <p>11 Q. Why did you do it?</p> <p>12 A. To help Massimo.</p> <p>13 Q. To help Massimo? Is Massimo your</p> <p>14 friend?</p> <p>15 A. A very good friend.</p> <p>16 Q. Did you have the authority to sign</p> <p>17 anything on behalf of Rosso Uptown?</p> <p>18 A. No.</p> <p>19 Q. Were you ever given permission by</p> <p>20 Massimo to speak for Rosso Uptown?</p> <p>21 A. No.</p> <p>22 Q. Did you ever speak to the press on</p> <p>23 behalf of Rosso Uptown?</p> <p>24 A. I beg your pardon?</p> <p>25 Q. Did you ever speak to any member of</p>	<p>1 -Michele Tizzano-</p> <p>2 A. No.</p> <p>3 Q. Do you know how they got your number?</p> <p>4 A. No.</p> <p>5 Q. Did you ask them how they got your</p> <p>6 number?</p> <p>7 A. No.</p> <p>8 Q. Did you ever tell any of these</p> <p>9 members of the press that you were the manager of</p> <p>10 Rosso Uptown?</p> <p>11 A. No.</p> <p>12 Q. Have you ever been sued at any other</p> <p>13 time for violations of the Fair Labor Standards</p> <p>14 Act or the New York Labor Law?</p> <p>15 A. Yes.</p> <p>16 Q. When were you sued?</p> <p>17 A. The specific time?</p> <p>18 Q. Approximately.</p> <p>19 A. Maybe two years ago.</p> <p>20 Q. Do you recall the name of the</p> <p>21 individual that sued you?</p> <p>22 A. No.</p> <p>23 Q. Where was that case venued; in which</p> <p>24 court?</p> <p>25 A. You know, I don't remember. I don't</p>
Page 34	Page 36
<p>1 -Michele Tizzano-</p> <p>2 the press on behalf of Rosso Uptown?</p> <p>3 A. Yes.</p> <p>4 Q. On how many occasions?</p> <p>5 A. It depends if they were calling me.</p> <p>6 Q. Why would a member of the press call</p> <p>7 you?</p> <p>8 A. Why they were calling me?</p> <p>9 Q. Yes, why would a member of the press</p> <p>10 call you?</p> <p>11 A. Ask them.</p> <p>12 Q. Why would a member of the press call</p> <p>13 you about Rosso Uptown?</p> <p>14 A. You have to ask them.</p> <p>15 Q. How would anyone know that you were</p> <p>16 affiliated with Rosso Uptown?</p> <p>17 A. You have to ask them.</p> <p>18 Q. How many different members of the</p> <p>19 press called you to speak about Rosso Uptown?</p> <p>20 A. Maybe one, two.</p> <p>21 Q. Do you know how they got your number?</p> <p>22 A. No.</p> <p>23 Q. Did you ever publish your number</p> <p>24 publicly in a format where people would know that</p> <p>25 you were involved in some way with Rosso Uptown?</p>	<p>1 -Michele Tizzano-</p> <p>2 think it was federal. It could be.</p> <p>3 Q. Who represented you in that lawsuit?</p> <p>4 A. Our attorney.</p> <p>5 Q. When you our, who was sued in that</p> <p>6 lawsuit?</p> <p>7 A. Me and Massimo.</p> <p>8 Q. Was Rosso Uptown also sued in that</p> <p>9 lawsuit?</p> <p>10 A. It could be.</p> <p>11 Q. Which attorneys represented you in</p> <p>12 that case?</p> <p>13 A. Initially Franco Tini.</p> <p>14 Q. I don't want to know about anything</p> <p>15 that you told Mr. Tini because that is completely</p> <p>16 confidential. I just want to know: Did you tell</p> <p>17 Mr. Tini the truth?</p> <p>18 A. Yes.</p> <p>19 Q. In that lawsuit that you were sued</p> <p>20 in, did you file any documents with the court?</p> <p>21 A. I don't recall. I don't think so.</p> <p>22 Q. Did any Mr. Tini file any documents</p> <p>23 with the court?</p> <p>24 A. You have to get in touch with Tini.</p> <p>25 I don't recall.</p>

9 (Pages 33 to 36)

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Page 37	Page 39
<p>1 -Michele Tizzano-</p> <p>2 Q. Did you ever go to that particular</p> <p>3 court in that lawsuit?</p> <p>4 A. No.</p> <p>5 Q. Who handles all of the hiring and</p> <p>6 firing at Pepe Rosso?</p> <p>7 A. Both me and Massimo.</p> <p>8 Q. Who negotiates wages with employees</p> <p>9 on behalf of Pepe Rosso?</p> <p>10 A. Both Massimo and I.</p> <p>11 Q. Who manages the employees of Pepe</p> <p>12 Rosso?</p> <p>13 A. Both Massimo and I.</p> <p>14 Q. How long have you been operating</p> <p>15 restaurants in Nassau County?</p> <p>16 A. Since 1998.</p> <p>17 Q. Is it lawful to pay cooks a salary in</p> <p>18 Nassau County?</p> <p>19 A. It depends.</p> <p>20 Q. What does it depend on?</p> <p>21 A. If they are the managers or -- there</p> <p>22 are some specifics which I'm not sure about it.</p> <p>23 But there are some cases that you can pay by</p> <p>24 salary.</p> <p>25 Q. Is it legal to pay waiters a salary</p>	<p>1 -Michele Tizzano-</p> <p>2 continued.)</p> <p>3 MR. MOSER: Mark them all.</p> <p>4 (Whereupon, a six-page document</p> <p>5 was marked as Plaintiff's Exhibit No.</p> <p>6 1 for identification only, as of this</p> <p>7 date.)</p> <p>8 (Whereupon, a five-page document</p> <p>9 was marked as Plaintiff's Exhibit No.</p> <p>10 2 for identification only, as of this</p> <p>11 date.)</p> <p>12 (Whereupon, a four-page document</p> <p>13 was marked as Plaintiff's Exhibit No.</p> <p>14 3 for identification only, as of this</p> <p>15 date.)</p> <p>16 (Whereupon, a one-page document</p> <p>17 was marked as Plaintiff's Exhibit No.</p> <p>18 4 for identification only, as of this</p> <p>19 date.)</p> <p>20 (Whereupon, a six-page document</p> <p>21 was marked as Plaintiff's Exhibit No.</p> <p>22 5 for identification only, as of this</p> <p>23 date.)</p> <p>24 (Whereupon, a three-page</p> <p>25 document was marked as Plaintiff's</p>
Page 38	Page 40
<p>1 -Michele Tizzano-</p> <p>2 in Nassau County?</p> <p>3 A. What's the question?</p> <p>4 Q. Is it legal to pay waiters or wait</p> <p>5 staff a salary in Nassau County?</p> <p>6 A. It is legal, that's what you're</p> <p>7 asking me?</p> <p>8 Q. Yes.</p> <p>9 A. I don't know.</p> <p>10 Q. Is it legal to pay bussers a salary</p> <p>11 in Nassau County?</p> <p>12 A. I don't know.</p> <p>13 Q. Do you know what the minimum wage is</p> <p>14 for restaurant employees in Nassau County?</p> <p>15 A. Yes.</p> <p>16 Q. What is that?</p> <p>17 A. 15 dollars an hour.</p> <p>18 Q. What is the tips minimum wage for</p> <p>19 employees in Nassau County?</p> <p>20 A. 15 with a five dollars credit; tip</p> <p>21 credit it's called.</p> <p>22 MR. MOSER: We can take a</p> <p>23 two-minute break.</p> <p>24 (Whereupon, a recess was taken.)</p> <p>25 (Whereupon, the Deposition was</p>	<p>1 -Michele Tizzano-</p> <p>2 Exhibit No. 6 for identification</p> <p>3 only, as of this date.)</p> <p>4 (Whereupon, a one-page document</p> <p>5 was marked as Plaintiff's Exhibit No.</p> <p>6 7 for identification only, as of this</p> <p>7 date.)</p> <p>8 BY MR. MOSER:</p> <p>9 Q. I just want to go back briefly. When</p> <p>10 you would work at Rosso Uptown, did the other</p> <p>11 employees know that you owned Pepe Rosso?</p> <p>12 A. They probably do.</p> <p>13 Q. How would they know that?</p> <p>14 A. They know me from town.</p> <p>15 Q. Were you recognized as a co-owner of</p> <p>16 Pepe Rosso with Massimo Gammella by the employees</p> <p>17 of Rosso Uptown?</p> <p>18 A. Yes.</p> <p>19 Q. Did you ever direct any of the</p> <p>20 activities of any employee at Rosso Uptown?</p> <p>21 A. Direct, what do you mean?</p> <p>22 Q. Did you ever tell any employee of</p> <p>23 Rosso Uptown while you were working there to do</p> <p>24 anything?</p> <p>25 A. When I was helping there, yes.</p>

10 (Pages 37 to 40)

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<p style="text-align: right;">Page 41</p> <p>1 -Michele Tizzano-</p> <p>2 Q. What would you tell the employees to</p> <p>3 do when you were helping?</p> <p>4 A. If I was helping the in dining room,</p> <p>5 I would show them how to work properly.</p> <p>6 Q. How would you show them how to work</p> <p>7 properly?</p> <p>8 A. That's what I do, Mr. Moser. If</p> <p>9 somebody comes to your office, I can show them how</p> <p>10 to how to file, how to do this. You have to be</p> <p>11 there to do it, right?</p> <p>12 Q. How many times would show employees</p> <p>13 of Rosso Uptown how to do their jobs properly?</p> <p>14 A. As many times as I saw that things</p> <p>15 were not done properly.</p> <p>16 Q. On how many different occasions did</p> <p>17 you do that?</p> <p>18 A. When I was helping there?</p> <p>19 Q. Correct.</p> <p>20 A. I don't know. I cannot approximate.</p> <p>21 Q. Did you tell employees of Rosso</p> <p>22 Uptown what to do more than a hundred times or</p> <p>23 less than a hundred times?</p> <p>24 A. I cannot guess.</p> <p>25 Q. So is it fair to say it could be more</p>	<p style="text-align: right;">Page 43</p> <p>1 -Michele Tizzano-</p> <p>2 specific question, the next time I'm not doing a</p> <p>3 guessing game with you.</p> <p>4 Q. So it could have been more than a</p> <p>5 hundred times or it could have been less than a</p> <p>6 hundred times that you gave Massimo advice on what</p> <p>7 to do with employees of Rosso Uptown?</p> <p>8 A. Are you repeating the same question</p> <p>9 to me again over and over? You're repeating the</p> <p>10 same question. My answer would be the same; I'm</p> <p>11 not doing this guessing game with you.</p> <p>12 Q. Well, can we say it was more or less</p> <p>13 than five times?</p> <p>14 A. I'm not doing a guessing with you,</p> <p>15 Mr. Moser.</p> <p>16 Q. Was there any specific instance that</p> <p>17 you can recall in which you spoke to Massimo about</p> <p>18 the employees of Rosso Uptown?</p> <p>19 A. Not a specific instance.</p> <p>20 Q. Do you recall generally what those</p> <p>21 conversations were about?</p> <p>22 A. No.</p> <p>23 Q. Why would you give Massimo advice on</p> <p>24 what to do with employees of Rosso Uptown?</p> <p>25 A. It's only if he asked me to.</p>
<p style="text-align: right;">Page 42</p> <p>1 -Michele Tizzano-</p> <p>2 than a hundred times or it could be less than a</p> <p>3 hundred times; we don't know?</p> <p>4 A. Mr. Moser, I am not playing this</p> <p>5 guessing game with you.</p> <p>6 Q. Who gave you the authority to tell</p> <p>7 employees of Rosso Uptown what to do?</p> <p>8 A. Nobody gave me the authority.</p> <p>9 Q. If there was an employee of Rosso</p> <p>10 Uptown that was especially difficult, what would</p> <p>11 you do?</p> <p>12 A. I would tell Massimo.</p> <p>13 Q. Would Massimo listen to your advice?</p> <p>14 A. Sometimes he did and sometimes he</p> <p>15 didn't.</p> <p>16 Q. On how many times did you give</p> <p>17 Massimo advice on what to do with employees of</p> <p>18 Rosso Uptown?</p> <p>19 A. I cannot guess. I don't want to</p> <p>20 guess.</p> <p>21 Q. Did you give Massimo advice on what</p> <p>22 to do with employees of Rosso Uptown more than a</p> <p>23 hundred times?</p> <p>24 A. Mr. Moser, again, I'm not doing this</p> <p>25 guessing game with you. Unless you have a</p>	<p style="text-align: right;">Page 44</p> <p>1 -Michele Tizzano-</p> <p>2 Q. So if he asked you, you would give</p> <p>3 him the advice?</p> <p>4 A. Certainly.</p> <p>5 Q. Do you recall how many times he asked</p> <p>6 you to give him advice about the employees?</p> <p>7 A. No.</p> <p>8 Q. Are you aware of any documents which</p> <p>9 show who the actual owners of Rosso Uptown were?</p> <p>10 A. It's a matter of public record; so</p> <p>11 yes.</p> <p>12 Q. There's a matter of public record</p> <p>13 which shows who the owners of Rosso Uptown were?</p> <p>14 A. Yes.</p> <p>15 Q. What is that record?</p> <p>16 A. You can go online and get it. It's a</p> <p>17 matter of public record. You do a search and it</p> <p>18 shows up.</p> <p>19 Q. I'm going to show you what's been</p> <p>20 marked as Plaintiff's Exhibit 1, and I'd like you</p> <p>21 to take a look at it and then I'll have some</p> <p>22 questions for you about it (handing).</p> <p>23 A. (Perusing). Okay.</p> <p>24 Q. What is the first page of this</p> <p>25 document?</p>

11 (Pages 41 to 44)

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Page 45	Page 47
<p>1 -Michele Tizzano-</p> <p>2 A. It's an answer.</p> <p>3 Q. Is it your original answer to the</p> <p>4 complaint in this case?</p> <p>5 A. Yes.</p> <p>6 Q. What is page two?</p> <p>7 A. An affidavit.</p> <p>8 Q. Is that your signature below where it</p> <p>9 says Michele Tizzano?</p> <p>10 A. Yes.</p> <p>11 Q. Then Exhibit A, what is Exhibit A?</p> <p>12 A. A certificate of incorporation.</p> <p>13 Q. How did you come into possession of</p> <p>14 this document?</p> <p>15 A. I think it was given to me by</p> <p>16 Massimo.</p> <p>17 Q. Where can we see who the owners of</p> <p>18 Rosso Uptown were; where is it a matter of public</p> <p>19 record?</p> <p>20 A. I think it says over here. No?</p> <p>21 Secretary of State. Massimo is the only name;</p> <p>22 sole proprietor, no?</p> <p>23 Q. Is this the document that you're</p> <p>24 talking about that you say identifies who the</p> <p>25 owners were?</p>	<p>1 -Michele Tizzano-</p> <p>2 designated as agent of the corporation upon whom</p> <p>3 process against the corporation may be served, and</p> <p>4 the address to which the Secretary of State shall</p> <p>5 mail a copy of any process against the corporation</p> <p>6 served upon him is: Care of Massimo Gammella, 664</p> <p>7 Flanders Drive, Valley Stream, New York 11581.</p> <p>8 Is that what you're referring to?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Is that the only reference in any</p> <p>11 document that you believe shows who the owners of</p> <p>12 Rosso Uptown were?</p> <p>13 A. This is what you gave me, so yes; but</p> <p>14 there's another paper that shows that the sole</p> <p>15 proprietor of Rosso Uptown is Massimo Gammella.</p> <p>16 Q. What is that document?</p> <p>17 A. I can provide it to you or maybe I</p> <p>18 would produce for you.</p> <p>19 Q. How do we know who the shareholders</p> <p>20 were according to this; does it say anywhere in</p> <p>21 this document who the shareholders were?</p> <p>22 A. No.</p> <p>23 Q. That being said, does it show</p> <p>24 anywhere in this document who the actual owners</p> <p>25 are?</p>
Page 46	Page 48
<p>1 -Michele Tizzano-</p> <p>2 A. Maybe not fully, but probably yes.</p> <p>3 Q. Do you know of any other document</p> <p>4 other than this which actually shows who the</p> <p>5 owners of Rosso Uptown were?</p> <p>6 A. Not at this time.</p> <p>7 Q. Where in this document does it say</p> <p>8 who the owners of Rosso Uptown were?</p> <p>9 A. I see only one name on it. So it</p> <p>10 should be only one.</p> <p>11 Q. Where in this document if you could</p> <p>12 please point to me in the document where it tells</p> <p>13 us who the owners of Rosso Uptown are?</p> <p>14 A. I'm not a lawyer but I think that</p> <p>15 it's right here where it says Massimo's name on it</p> <p>16 (indicating).</p> <p>17 Q. So you're pointing to the second to</p> <p>18 the last page?</p> <p>19 A. Yes.</p> <p>20 Q. Where it begins fifth on the top</p> <p>21 there?</p> <p>22 A. Mm-hmm, yes.</p> <p>23 Q. I'm going to read that into the</p> <p>24 record:</p> <p>25 Fifth: The Secretary of State is</p>	<p>1 -Michele Tizzano-</p> <p>2 A. No, but I can produce documents for</p> <p>3 you showing it. So if I produce documents who the</p> <p>4 owner is, what happens? You are assuming. If I</p> <p>5 provide a copy of papers where it shows that Rosso</p> <p>6 Uptown is owned by a sole proprietor, what happens</p> <p>7 to this lawsuit, Mr. Moser? You're making a lot</p> <p>8 of assumptions.</p> <p>9 Q. I'm going to show you what's been</p> <p>10 marked as Plaintiff's Exhibit 5 for identification</p> <p>11 (handing).</p> <p>12 A. Okay, where do you want me to look</p> <p>13 (perusing)?</p> <p>14 Q. Is this the document that you are</p> <p>15 referring to that you say shows that Mr. Gammella</p> <p>16 was the only owner of Rosso Uptown?</p> <p>17 A. No.</p> <p>18 Q. I want you to look at page one. I'm</p> <p>19 going to read the second paragraph and I'll begin</p> <p>20 after Rosso Uptown, Limited.</p> <p>21 It says: I cannot provide any</p> <p>22 documents or records to answer Mr. Moser (sic)</p> <p>23 discovery requests/instructions from one to two</p> <p>24 and from A to D three to five, definitions from</p> <p>25 one to 12, interrogatories from one to 22.</p>

12 (Pages 45 to 48)

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<p style="text-align: right;">Page 49</p> <p>1 -Michele Tizzano-</p> <p>2 Did you sign that?</p> <p>3 A. Yes.</p> <p>4 Q. So you already said that you can't</p> <p>5 provide any document responses to this lawsuit; is</p> <p>6 that true?</p> <p>7 A. What was the question again? Can you</p> <p>8 rephrase it?</p> <p>9 Q. This is addressed to the Court,</p> <p>10 correct?</p> <p>11 A. Right.</p> <p>12 Q. Did you tell the Court that you don't</p> <p>13 have any documents?</p> <p>14 A. Documents -- well, the way it says</p> <p>15 over here, I think you were referring to documents</p> <p>16 and records for Rosso Uptown employees.</p> <p>17 Q. Were you truthful to the Court when</p> <p>18 you wrote this letter?</p> <p>19 A. I beg your pardon?</p> <p>20 Q. Were you truthful to the Court when</p> <p>21 you wrote this letter?</p> <p>22 A. Yes.</p> <p>23 Q. Is everything in this letter the</p> <p>24 truth?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 51</p> <p>1 -Michele Tizzano-</p> <p>2 A. It could have been on file.</p> <p>3 MR. MOSER: I'm going to have to</p> <p>4 have this marked as Exhibit 8.</p> <p>5 (Whereupon, a seven-page</p> <p>6 document was marked as Plaintiff's</p> <p>7 Exhibit No. 8 for identification</p> <p>8 only, as of this date.)</p> <p>9 Q. Was what's been marked as Plaintiff's</p> <p>10 Exhibit 5 your response to what I'm going to show</p> <p>11 you now which is Plaintiff's Exhibit 8 (handing)?</p> <p>12 A. (Perusing). It could possibly be.</p> <p>13 Q. I don't want to know possibly.</p> <p>14 A. I don't remember. You got to give me</p> <p>15 time, but you send us --</p> <p>16 Q. Take as much time as you need to</p> <p>17 review the document.</p> <p>18 A. (Perusing). Well, thank you for</p> <p>19 pointing it out to me. Yes, I think it is. And</p> <p>20 maybe my answer, I made a mistake here in</p> <p>21 answering over here. Because I do have --</p> <p>22 Q. So you --</p> <p>23 A. I'm speaking. I do have some</p> <p>24 documents maybe that they can show who the</p> <p>25 corporation defendant is, the sole proprietor.</p>
<p style="text-align: right;">Page 50</p> <p>1 -Michele Tizzano-</p> <p>2 Q. Were you ever present for any food</p> <p>3 inspections or public health inspections at Rosso</p> <p>4 Uptown?</p> <p>5 A. I might have.</p> <p>6 Q. On how many occasions?</p> <p>7 A. I cannot say.</p> <p>8 Q. Was it more than once?</p> <p>9 A. I cannot guess.</p> <p>10 Q. Was it more than ten times?</p> <p>11 A. I cannot guess.</p> <p>12 Q. Did you have a food preparation</p> <p>13 certificate on file for Rosso Uptown?</p> <p>14 A. It could be.</p> <p>15 Q. Why?</p> <p>16 A. Because it's good to have it so I can</p> <p>17 use it.</p> <p>18 Q. So you can work at the restaurant?</p> <p>19 A. Not necessarily.</p> <p>20 Q. Why would you have a food inspection</p> <p>21 certificate on file with a restaurant that you had</p> <p>22 no ownership in?</p> <p>23 A. I'm not sure if it was on file but</p> <p>24 it's good to have a food certificate.</p> <p>25 Q. So it could have been on file?</p>	<p style="text-align: right;">Page 52</p> <p>1 -Michele Tizzano-</p> <p>2 Yes, maybe you're right and --</p> <p>3 Q. So --</p> <p>4 A. I'm speaking, Mr. Moser. And thank</p> <p>5 you for pointing out to me that I made a mistake</p> <p>6 in answering over here because I do have documents</p> <p>7 on record that can show that Rosso Uptown is a</p> <p>8 corporation owned by a sole proprietor.</p> <p>9 I'm not a lawyer. And when I</p> <p>10 presented this answer, I may have made a mistake</p> <p>11 in identifying all the paragraphs (phonetic).</p> <p>12 You're right. Thank you for pointing it out to</p> <p>13 me. I do have a document that shows who the sole</p> <p>14 proprietor is.</p> <p>15 Q. My original question was: Is</p> <p>16 Plaintiff's Exhibit 5 your response to Exhibit 8?</p> <p>17 A. Yes.</p> <p>18 Q. When you wrote this -- Plaintiff's</p> <p>19 Exhibit 5 -- you addressed it to Your Honor,</p> <p>20 correct?</p> <p>21 A. That's what it says, yes.</p> <p>22 Q. That was addressed to Magistrate</p> <p>23 Judge Steven Locke, correct?</p> <p>24 A. Yes, yes.</p> <p>25 Q. And he's a federal judge, correct?</p>

13 (Pages 49 to 52)

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<p style="text-align: right;">Page 53</p> <p>1 -Michele Tizzano-</p> <p>2 A. Yes.</p> <p>3 Q. Somebody notarized your signature,</p> <p>4 correct?</p> <p>5 A. Yes.</p> <p>6 Q. Your signature appears below your</p> <p>7 name?</p> <p>8 A. Yes.</p> <p>9 Q. When this individual notarized your</p> <p>10 signature, did she ask you to raise your right</p> <p>11 hand and say that the information herein is true</p> <p>12 and correct?</p> <p>13 A. No.</p> <p>14 Q. What did she do?</p> <p>15 A. Looked at my driver's license.</p> <p>16 Q. You said in the second to the last</p> <p>17 paragraph to Judge Locke: I cannot provide any</p> <p>18 documents or records to answer Mr. Moser's</p> <p>19 discovery requests...</p> <p>20 Did you in fact tell that to Judge</p> <p>21 Locke?</p> <p>22 A. Yes. But you pointed something out</p> <p>23 to me and you were right because I should of maybe</p> <p>24 not included all the paragraphs from A to D, three</p> <p>25 to five, one to 12 and one to 22 because I do have</p>	<p style="text-align: right;">Page 55</p> <p>1 -Michele Tizzano-</p> <p>2 maybe document request number 19: Records</p> <p>3 concerning the names, titles and duties of each</p> <p>4 member of the board of the directors of each</p> <p>5 corporate defendant, during the relevant time</p> <p>6 period, along with the dates on which each title</p> <p>7 was held.</p> <p>8 I can produce a document for you if</p> <p>9 you want.</p> <p>10 * Q. Please do. When can you get me that</p> <p>11 document?</p> <p>12 A. I will speak to Massimo and I will</p> <p>13 forward it to you as soon as possible.</p> <p>14 Q. Are you aware that Massimo told me</p> <p>15 that he doesn't have that document?</p> <p>16 A. You have to ask Massimo.</p> <p>17 Q. I'll show you his response. I'm</p> <p>18 going to show you what's been marked as</p> <p>19 Plaintiff's Exhibit 7. You're seen Mr. Gammella's</p> <p>20 signature before; have you not?</p> <p>21 A. It says his name. I don't know -- I</p> <p>22 mean, his signature it could be, yes.</p> <p>23 Q. Before today have you ever seen</p> <p>24 Mr. Gammella's signature?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 54</p> <p>1 -Michele Tizzano-</p> <p>2 some papers that maybe can provide that Rosso</p> <p>3 Uptown is owned only by a sole proprietor.</p> <p>4 Q. Where are these documents?</p> <p>5 A. I have to ask Massimo.</p> <p>6 Q. As you're sitting here today, have</p> <p>7 you produced any document in this case which shows</p> <p>8 that you were not an owner of Rosso Uptown?</p> <p>9 A. It could be. I got to go through all</p> <p>10 my answers.</p> <p>11 Q. I'm talking about an independent</p> <p>12 document; I'm not talking about your can answers.</p> <p>13 As we're sitting here today, have you</p> <p>14 produced any documents which show that you were</p> <p>15 not an owner of Rosso Uptown?</p> <p>16 A. No, but I can produce one to you.</p> <p>17 And I'm asking you if I produce one, what happens?</p> <p>18 Q. Well, I don't know why it hasn't been</p> <p>19 produced to date. In fact, I don't know why you</p> <p>20 would tell Judge Locke that you don't have it and</p> <p>21 then come to a deposition and tell me that somehow</p> <p>22 you do. So I'm confused.</p> <p>23 A. Mr. Moser, I'm not a lawyer. When I</p> <p>24 presented the answer over here, I should have</p> <p>25 maybe leave (sic) out some paragraphs that say --</p>	<p style="text-align: right;">Page 56</p> <p>1 -Michele Tizzano-</p> <p>2 Q. Does that appear to be his signature</p> <p>3 on this document?</p> <p>4 A. Yes.</p> <p>5 Q. I'm just going to read this into the</p> <p>6 record as well.</p> <p>7 A. But I think -- I believe --</p> <p>8 Q. There's no question.</p> <p>9 A. No, it's not a question. All right,</p> <p>10 go ahead.</p> <p>11 Q. The first the sentence says: I,</p> <p>12 Massimo Gammella, president and sole proprietor of</p> <p>13 Rosso Uptown, Limited in reference to Mr. Moser's</p> <p>14 discovery request can't produce any records</p> <p>15 related to his demands.</p> <p>16 Do you see that?</p> <p>17 A. Mm-hmm, yes.</p> <p>18 Q. If Mr. Gammella already told us that</p> <p>19 he doesn't have these records, how would you get</p> <p>20 them from him?</p> <p>21 A. Okay, first of all, the records that</p> <p>22 I referred in my answer and the records I believe</p> <p>23 Massimo is referring in his answer are the records</p> <p>24 related to payroll; not to produce a document</p> <p>25 where he can prove that he's the sole proprietor;</p>

14 (Pages 53 to 56)

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<p style="text-align: right;">Page 57</p> <p>1 -Michele Tizzano-</p> <p>2 and even though you can go to public records or to</p> <p>3 the Secretary of State and get papers that shows</p> <p>4 that a corporation is owned by one individual, two</p> <p>5 individuals, three individuals. Like I said, we</p> <p>6 are not lawyers.</p> <p>7 So my answer to your Exhibit 5 over</p> <p>8 here and Exhibit 8 was related to payroll</p> <p>9 documents that you were asking.</p> <p>10 Q. So now you're limiting your responses</p> <p>11 in both your letter which is Plaintiff's Exhibit 5</p> <p>12 and Mr. Massimo's letter which is Exhibit 7 to</p> <p>13 only include payroll records? In other words, you</p> <p>14 said you had no records. What you really meant is</p> <p>15 we just don't have payroll record but we have</p> <p>16 everything else?</p> <p>17 A. I can produce the other paper here,</p> <p>18 the other document that shows who the owner of the</p> <p>19 corporation is.</p> <p>20 Q. Are you familiar with a case by the</p> <p>21 name of Barrera against Pepe Rosso?</p> <p>22 A. Yes.</p> <p>23 Q. Are you aware that that was venued in</p> <p>24 the United States District Court for the Eastern</p> <p>25 District of New York?</p>	<p style="text-align: right;">Page 59</p> <p>1 -Michele Tizzano-</p> <p>2 lawsuit?</p> <p>3 A. We started negotiating with the</p> <p>4 lawyers; we started negotiating with Borrelli's</p> <p>5 office.</p> <p>6 Q. Who represented you at the time you</p> <p>7 were negotiating with Borrelli's office?</p> <p>8 A. Mr. Tini; yes, Mr. Tini.</p> <p>9 Q. Did you eventually come to a</p> <p>10 resolution of the case?</p> <p>11 A. Yes.</p> <p>12 Q. Were you represented by counsel when</p> <p>13 you resolved the case?</p> <p>14 A. Are you asking if we had a lawyer at</p> <p>15 the time?</p> <p>16 Q. Yes.</p> <p>17 A. No.</p> <p>18 Q. I'm going to show you what's been</p> <p>19 marked as Plaintiff's Exhibit 6. It appears to be</p> <p>20 a letter from Mr. Gammella to the Judge in that</p> <p>21 other case. Do you see this (handing)?</p> <p>22 A. (Perusing). Yes.</p> <p>23 Q. Did you ever write any letters to the</p> <p>24 Judge in that case?</p> <p>25 A. You know, I don't remember.</p>
<p style="text-align: right;">Page 58</p> <p>1 -Michele Tizzano-</p> <p>2 A. I told you before I don't know in</p> <p>3 which court it was held.</p> <p>4 MR. MOSER: Mark this.</p> <p>5 (Whereupon, a 19-page document</p> <p>6 was marked as Plaintiff's Exhibit No.</p> <p>7 9 for identification only, as of this</p> <p>8 date.)</p> <p>9 Q. I'm going to show what's been marked</p> <p>10 Plaintiff's Exhibit 9 for identification. Does</p> <p>11 this refresh your memory about where the other</p> <p>12 lawsuit was filed (handing)?</p> <p>13 A. (Perusing). It says in the District</p> <p>14 Court. So I don't know where the court is.</p> <p>15 Q. Didn't you in fact represent yourself</p> <p>16 in this lawsuit at some point in time?</p> <p>17 A. We asked Mr. Tini to resign, yes.</p> <p>18 Q. So you represented yourself?</p> <p>19 A. We started negotiating with</p> <p>20 Borrelli's office, yes.</p> <p>21 Q. So in fact you did represent yourself</p> <p>22 in this lawsuit?</p> <p>23 A. We were speaking through Borrelli's</p> <p>24 lawyers, yes.</p> <p>25 Q. Did you represent yourself in this</p>	<p style="text-align: right;">Page 60</p> <p>1 -Michele Tizzano-</p> <p>2 Q. Who prepared this document; who typed</p> <p>3 this? Who typed that?</p> <p>4 A. Who typed it; who physically typed</p> <p>5 it?</p> <p>6 Q. Correct.</p> <p>7 A. I assume Massimo.</p> <p>8 Q. Who printed it?</p> <p>9 A. Massimo.</p> <p>10 Q. I'll show you what's been marked as</p> <p>11 Plaintiff's Exhibit 3 for identification. Do you</p> <p>12 recognize that document (handing)?</p> <p>13 A. (Perusing). Yes.</p> <p>14 Q. Who wrote this document?</p> <p>15 A. I did.</p> <p>16 Q. Who typed this document?</p> <p>17 A. I assume I did.</p> <p>18 Q. Who printed this document?</p> <p>19 A. I did.</p> <p>20 Q. Can you explain why Plaintiff's</p> <p>21 Exhibits 6 and 3 are almost identical in their</p> <p>22 format?</p> <p>23 A. Yes.</p> <p>24 Q. How can you explain that?</p> <p>25 A. We share the same printer in the</p>

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<p style="text-align: right;">Page 61</p> <p>1 -Michele Tizzano-</p> <p>2 office, the same computer in the office.</p> <p>3 Q. Did someone just change the names on</p> <p>4 this for you and Mr. Gammella and leave everything</p> <p>5 else the same in the letter?</p> <p>6 A. Well, we have a template. So if you</p> <p>7 have a template, you know, we follow it.</p> <p>8 Q. Who did that?</p> <p>9 A. We both did.</p> <p>10 Q. You're the one who actually typed</p> <p>11 this up?</p> <p>12 A. I don't remember.</p> <p>13 Q. You just testified --</p> <p>14 A. I typed mine for sure.</p> <p>15 Q. You typed yours for sure but you</p> <p>16 might not have typed his; is that fair to say?</p> <p>17 A. Yes.</p> <p>18 Q. Where did you mail this letter?</p> <p>19 A. It was filed and then mailed to</p> <p>20 Borrelli, I assume, if it was mailed.</p> <p>21 Q. Somebody filed this with the United</p> <p>22 States District Clerk (sic) for the Eastern</p> <p>23 District of New York. Was that you?</p> <p>24 A. Maybe Massimo because I -- you know.</p> <p>25 What does this case have to do with Uptown?</p>	<p style="text-align: right;">Page 63</p> <p>1 -Michele Tizzano-</p> <p>2 federal court?</p> <p>3 Q. Yes.</p> <p>4 A. Then yes.</p> <p>5 Q. Is everything that you told the Judge</p> <p>6 in the Barrera case true?</p> <p>7 A. Yes.</p> <p>8 Q. Did your attorney, Mr. Tini, answer</p> <p>9 the complaint in the Barrera matter?</p> <p>10 A. In the beginning he must have, yes.</p> <p>11 Q. Was everything in that answer</p> <p>12 truthful?</p> <p>13 A. I assume yes.</p> <p>14 Q. I don't want you to assume. I want</p> <p>15 you to tell me if you were honest with the Court</p> <p>16 in your answer.</p> <p>17 A. Yes.</p> <p>18 MR. MOSER: I'm going to mark</p> <p>19 this one.</p> <p>20 (Whereupon, a five-page document</p> <p>21 was marked as Plaintiff's Exhibit No.</p> <p>22 10 for identification only, as of</p> <p>23 this date.)</p> <p>24 Q. I'm going to show you what's been</p> <p>25 marked as Plaintiff's Exhibit 10. I'd like you to</p>
<p style="text-align: right;">Page 62</p> <p>1 -Michele Tizzano-</p> <p>2 Q. Does this refresh your memory as to</p> <p>3 where the Barrera case was brought?</p> <p>4 A. Well, I see the District Court, yes.</p> <p>5 Q. Which is the same court that our case</p> <p>6 is in, correct; the United States District Court</p> <p>7 for the Eastern District of New York?</p> <p>8 A. No, we filed yours in federal; in</p> <p>9 Islip, no?</p> <p>10 Q. Do you see the caption here? If we</p> <p>11 look at this caption here -- and I'm pointing to</p> <p>12 Plaintiff's Exhibit 9 -- it says United States</p> <p>13 District Court, Eastern District of New York. Do</p> <p>14 you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Isn't that the same court where we</p> <p>17 are now?</p> <p>18 A. Our case?</p> <p>19 Q. Yes.</p> <p>20 A. I think ours in Islip, no, in federal</p> <p>21 court?</p> <p>22 Q. Correct.</p> <p>23 A. Isn't it federal court, Mr. Moser?</p> <p>24 Q. Yes.</p> <p>25 A. The United States District Court is</p>	<p style="text-align: right;">Page 64</p> <p>1 -Michele Tizzano-</p> <p>2 turn to the last page. Is your signature on this</p> <p>3 document?</p> <p>4 A. Yes.</p> <p>5 Q. Is Mr. Gammella's signature on this</p> <p>6 document?</p> <p>7 A. Yes.</p> <p>8 Q. Below your signature it says that</p> <p>9 you're signing pro se, on behalf of himself, and</p> <p>10 all corporate defendants. Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Did you sign on behalf of all</p> <p>13 corporate defendants?</p> <p>14 A. Yes.</p> <p>15 Q. Did you have the authority to sign on</p> <p>16 behalf of all corporate defendants?</p> <p>17 A. Yes.</p> <p>18 Q. Thank you.</p> <p>19 (Whereupon, a six-page document</p> <p>20 consisting of long pages was marked</p> <p>21 as Plaintiff's Exhibit No. 11 for</p> <p>22 identification only, as of this</p> <p>23 date.)</p> <p>24 Q. Mr. Tizzano, I'm going to show you</p> <p>25 what's been marked as Plaintiff's Exhibit 11 for</p>

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<p style="text-align: right;">Page 65</p> <p>1 -Michele Tizzano-</p> <p>2 identification. I'll tell you what this is</p> <p>3 because it's not evident from the face of the</p> <p>4 document.</p> <p>5 A. (Perusing).</p> <p>6 Q. The New York State Department of</p> <p>7 Health keeps records of all inspections of</p> <p>8 restaurants. Are you aware of that?</p> <p>9 A. Yes.</p> <p>10 Q. This is a printout of the records</p> <p>11 maintained by the New York State Department of</p> <p>12 Health for Rosso Uptown. I see that on the first</p> <p>13 page, your name is mentioned. It says FMTC</p> <p>14 Michael Tizzano on the lower right-hand corner.</p> <p>15 Do you see that?</p> <p>16 A. Mm-hmm, yes.</p> <p>17 Q. Do you know why your name appears on</p> <p>18 this document?</p> <p>19 A. We discussed before that my food</p> <p>20 certificate might have been on file.</p> <p>21 Q. This says that the date of inspection</p> <p>22 was October 26th of 2017. So your food</p> <p>23 certificate was on file as of that date?</p> <p>24 A. It could be before. It could be,</p> <p>25 yes.</p>	<p style="text-align: right;">Page 67</p> <p>1 -Michele Tizzano-</p> <p>2 Q. You're not saying that you're the one</p> <p>3 responsible for making sure that the food is</p> <p>4 healthy and fit for public consumption?</p> <p>5 A. Yes.</p> <p>6 Q. So you told the Department of Health</p> <p>7 that you were responsible for making sure that the</p> <p>8 food served at Rosso Uptown was fit for public</p> <p>9 consumption?</p> <p>10 A. No, because this certificate, you</p> <p>11 could have it for one location and another</p> <p>12 location. So it applies to the location that</p> <p>13 you're going to post the certificate.</p> <p>14 Q. The food certificate identifies the</p> <p>15 individual who is responsible for making sure that</p> <p>16 the food that is served is fit for public</p> <p>17 consumption, correct?</p> <p>18 A. It could be a manager. It could be a</p> <p>19 waiter. It could be --</p> <p>20 Q. It could be anybody?</p> <p>21 A. -- a counterperson, yes.</p> <p>22 Q. The food certificate identifies that</p> <p>23 individual, correct?</p> <p>24 A. Yes.</p> <p>25 Q. That particular individual was</p>
<p style="text-align: right;">Page 66</p> <p>1 -Michele Tizzano-</p> <p>2 Q. If you look on page two on the lower</p> <p>3 right-hand corner, it mentions your name again,</p> <p>4 correct?</p> <p>5 A. Mm-hmm, of course it does.</p> <p>6 Q. That's because your food certificate</p> <p>7 was on file with Rosso Uptown?</p> <p>8 A. Yes, sir.</p> <p>9 Q. If we look at each page of this</p> <p>10 document, does your name appear on each page of</p> <p>11 this document?</p> <p>12 A. Yes, it goes to the first inspection</p> <p>13 date. So that's why it shows.</p> <p>14 Q. Were you present for all of those</p> <p>15 inspections?</p> <p>16 A. It could be; maybe not. Who owns the</p> <p>17 certificate, you know, a manager doesn't have to</p> <p>18 be on the premises for the inspection.</p> <p>19 Q. When you obtain a food certificate</p> <p>20 for a restaurant, do you make certain</p> <p>21 representations about what you're doing there?</p> <p>22 A. No.</p> <p>23 Q. So you don't say that you're the one</p> <p>24 preparing the food?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 68</p> <p>1 -Michele Tizzano-</p> <p>2 identified as you, correct?</p> <p>3 A. Yes.</p> <p>4 Q. For Rosso Uptown, correct?</p> <p>5 A. If the certificate is for Rosso</p> <p>6 Uptown, yes.</p> <p>7 Q. Why did you represent to the New York</p> <p>8 State Department of Health that you were</p> <p>9 responsible for making sure that the food served</p> <p>10 at Rosso Uptown was fit for public consumption?</p> <p>11 A. Because Pepe Rosso holds Massimo's</p> <p>12 name and Massimo needed somebody. And at that</p> <p>13 time Massimo could not find a manager or a cook to</p> <p>14 hold the certificate. So I went to get it.</p> <p>15 Q. So you did it to help Massimo?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Were you in fact responsible for</p> <p>18 making sure that the food served at Rosso Uptown</p> <p>19 was fit for human consumption?</p> <p>20 A. Yes and no.</p> <p>21 Q. What do you mean?</p> <p>22 A. Because the matter of truth is you</p> <p>23 can hold the certificate but it doesn't mean that</p> <p>24 you are there constantly. That's what happens.</p> <p>25 It's the truth, it's reality but that's what</p>

17 (Pages 65 to 68)

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<p style="text-align: right;">Page 69</p> <p>1 -Michele Tizzano-</p> <p>2 happens. And whoever owns a certificate, a</p> <p>3 manager, does not certainly mean that you own a</p> <p>4 business. I can have a restaurant and I can have</p> <p>5 a manager go get a food certificate and post it.</p> <p>6 That doesn't mean he's the owner. You can go</p> <p>7 tomorrow and get a certificate and post it in a</p> <p>8 deli. That doesn't make you the owner.</p> <p>9 MR. MOSER: Mark these.</p> <p>10 (Whereupon, a one-page document</p> <p>11 was marked as Plaintiff's Exhibit No.</p> <p>12 12 for identification only, as of</p> <p>13 this date.)</p> <p>14 (Whereupon, a one-page document</p> <p>15 was marked as Plaintiff's Exhibit No.</p> <p>16 13 for identification only, as of</p> <p>17 this date.)</p> <p>18 (Whereupon, an eight-page</p> <p>19 document was marked as Plaintiff's</p> <p>20 Exhibit No. 14 for identification</p> <p>21 only, as of this date.)</p> <p>22 Q. I'm going to show you what's been</p> <p>23 marked as Plaintiff's Exhibit 12 for</p> <p>24 identification. Do you recognize this document</p> <p>25 (handing)?</p>	<p style="text-align: right;">Page 71</p> <p>1 -Michele Tizzano-</p> <p>2 is that?</p> <p>3 A. That's the website e-mail.</p> <p>4 Q. Who has access to that e-mail?</p> <p>5 A. Right now, Massimo and I both do.</p> <p>6 Q. You both have access to that e-mail,</p> <p>7 correct?</p> <p>8 A. Recently we do, yes.</p> <p>9 Q. Who created that e-mail address?</p> <p>10 A. Massimo did.</p> <p>11 Q. I'm looking at Plaintiff's Exhibit 12</p> <p>12 and do you see where it say text at (516) 382-5529</p> <p>13 (sic)?</p> <p>14 A. 5549, yes.</p> <p>15 Q. 5549, correct. Whose phone number is</p> <p>16 that?</p> <p>17 A. It used to be mine.</p> <p>18 Q. Your phone number?</p> <p>19 A. Mm-hmm, yeah.</p> <p>20 Q. So is it fair to say that you put a</p> <p>21 job posting for Rosso Uptown asking for people who</p> <p>22 are looking to be hired to text you?</p> <p>23 A. Yes.</p> <p>24 Q. Why?</p> <p>25 A. They would text me and I referred</p>
<p style="text-align: right;">Page 70</p> <p>1 -Michele Tizzano-</p> <p>2 A. (Perusing). Yes.</p> <p>3 Q. What is this?</p> <p>4 A. It looks a page from either Facebook</p> <p>5 or Instagram.</p> <p>6 Q. Is this your Facebook page?</p> <p>7 A. Mm-hmm, yes -- no, not mine; the</p> <p>8 restaurant's, maybe a manager.</p> <p>9 Q. Was this --</p> <p>10 A. Oh, my Facebook page. It is my</p> <p>11 personal Facebook page.</p> <p>12 Q. Just to clarify, Plaintiff's Exhibit</p> <p>13 12 is a printout of a posting from your personal</p> <p>14 Facebook page?</p> <p>15 A. Yes.</p> <p>16 Q. It says we are hiring?</p> <p>17 A. Yes.</p> <p>18 Q. Why did you put this on your Facebook</p> <p>19 page?</p> <p>20 A. Well, if Massimo was in need of</p> <p>21 recruiting employees, I would help. Before we</p> <p>22 said it that I used to manage; you know, I helped</p> <p>23 with Instagram and Facebook page. I don't see</p> <p>24 nothing wrong.</p> <p>25 Q. Mm@rossouptown, whose e-mail address</p>	<p style="text-align: right;">Page 72</p> <p>1 -Michele Tizzano-</p> <p>2 them to Massimo or I used to tell them, you know,</p> <p>3 what kind of position that needs to be filled and</p> <p>4 I pass them on to Massimo.</p> <p>5 Q. Did you have permission from Massimo</p> <p>6 to do this?</p> <p>7 A. Sometimes yes and sometimes no.</p> <p>8 Q. Why did you put your phone number</p> <p>9 here instead of Massimo's if Massimo was the one</p> <p>10 doing the hiring?</p> <p>11 A. Because I think I have a better</p> <p>12 character of judgment when it comes to this.</p> <p>13 Q. So you were better qualified to</p> <p>14 determine --</p> <p>15 A. I have a niche for it.</p> <p>16 Q. You were better qualified to make</p> <p>17 hiring decisions for Rosso Uptown than</p> <p>18 Mr. Gammella?</p> <p>19 A. No hiring.</p> <p>20 Q. Then what would you call it?</p> <p>21 A. Judge of character.</p> <p>22 Q. Judge of character of --</p> <p>23 A. Just by talking to people.</p> <p>24 Q. Judge of character of potential</p> <p>25 employees?</p>

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<p style="text-align: right;">Page 73</p> <p>1 -Michele Tizzano-</p> <p>2 A. If Massimo agreed, probably.</p> <p>3 Q. How would you judge the character of</p> <p>4 potential employees who were applying?</p> <p>5 A. Asking questions: Where they worked</p> <p>6 before; what type of abilities; if they know the</p> <p>7 difference between, you know, how to cook a set</p> <p>8 (phonetic) recipe; how to use a machine.</p> <p>9 Q. So you would conduct a job interview?</p> <p>10 A. No, not necessary.</p> <p>11 Q. So you would ask them about their</p> <p>12 experience, correct?</p> <p>13 A. Mm-hmm, yeah.</p> <p>14 Q. You would ask them about their</p> <p>15 knowledge?</p> <p>16 A. Yes.</p> <p>17 Q. And you would make a determination as</p> <p>18 to their character, correct?</p> <p>19 A. If I met them personally, probably</p> <p>20 yes.</p> <p>21 Q. And this was not a job interview?</p> <p>22 A. No.</p> <p>23 Q. How many times did you meet with</p> <p>24 people personally to determine their character</p> <p>25 before they were hired at Rosso Uptown?</p>	<p style="text-align: right;">Page 75</p> <p>1 -Michele Tizzano-</p> <p>2 A. But any mail name does not define a</p> <p>3 business per se. I could have mm@whatever --</p> <p>4 mainstreet, bakery. What does it mean, Mr. Moser.</p> <p>5 You're talking about 2018.</p> <p>6 Q. I'm going to show you what's been</p> <p>7 marked as Exhibit 14 and I'd like you to look at</p> <p>8 this (handing).</p> <p>9 A. (Perusing).</p> <p>10 Q. What is this?</p> <p>11 A. It seems you had a good time going</p> <p>12 through my Facebook page.</p> <p>13 Q. Is it your Facebook page?</p> <p>14 A. Yes, it is.</p> <p>15 Q. Where it says on the second page</p> <p>16 Brick Osteria --</p> <p>17 A. The second page?</p> <p>18 Q. Yes.</p> <p>19 A. Where?</p> <p>20 Q. The second page.</p> <p>21 A. Anthony Soldano and 12 others at</p> <p>22 Brick Osteria?</p> <p>23 Q. Do you see that?</p> <p>24 A. Are you talking about the bottom?</p> <p>25 Q. Yes, I'm talking about the first post</p>
<p style="text-align: right;">Page 74</p> <p>1 -Michele Tizzano-</p> <p>2 A. I'm not doing a guessing game again.</p> <p>3 Q. Could it have been a hundred times?</p> <p>4 A. Mr. Moser, again, I'm not guessing.</p> <p>5 Q. Can you give me any approximation of</p> <p>6 how many times you met with people who were</p> <p>7 applying for work at Rosso Uptown to evaluate</p> <p>8 their character?</p> <p>9 A. No.</p> <p>10 Q. I want you to look at 13. Is this</p> <p>11 also a posting on your Facebook page?</p> <p>12 A. It says my name on it; August of</p> <p>13 2018, yes.</p> <p>14 Q. Were people in fact e-mailing you at</p> <p>15 mm@rossouptown in August of 2018?</p> <p>16 A. We established that</p> <p>17 mm@rossouptown.com is a shared e-mail with</p> <p>18 Massimo. So we both had access.</p> <p>19 Q. Why; why would you have access to the</p> <p>20 Rosso Uptown e-mail?</p> <p>21 A. Because Massimo and I shared an</p> <p>22 e-mail. It makes sense for us.</p> <p>23 Q. Even though you were not a manager</p> <p>24 and did not own the restaurant and had nothing to</p> <p>25 do with it?</p>	<p style="text-align: right;">Page 76</p> <p>1 -Michele Tizzano-</p> <p>2 underneath the word posts.</p> <p>3 A. Yes, Michael Tizzano is with Anthony</p> <p>4 Soldano and 12 others at Brick Osteria.</p> <p>5 Q. Did you in fact make this post?</p> <p>6 A. Yes.</p> <p>7 Q. When it says Brick Osteria, does that</p> <p>8 mean that you were at the same premises of Rosso</p> <p>9 Uptown?</p> <p>10 A. It's a Facebook page. Most probably</p> <p>11 yes, we were at the location and 12 others.</p> <p>12 Q. Whenever we see Brick Osteria in this</p> <p>13 document, it's referring to Rosso Uptown, Limited</p> <p>14 doing business as Brick Osteria, correct?</p> <p>15 A. We established before that Rosso</p> <p>16 Uptown changed identities three times; Brick</p> <p>17 Osteria, 11 Zero 50. Yes, so it's a correct</p> <p>18 assumption that we're referring to Rosso Uptown.</p> <p>19 Q. You were in all of these postings.</p> <p>20 Were you just eating at the restaurant; why were</p> <p>21 you making these posts?</p> <p>22 A. Well, it could be probably that I was</p> <p>23 having dinner there and I posted; like all the</p> <p>24 influencers do now in social media.</p> <p>25 Q. I want you to look at the fourth page</p>

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<p>1 -Michele Tizzano-</p> <p>2 which has basically a picture of a pizza.</p> <p>3 A. Okay.</p> <p>4 Q. You put a posting here: Our version</p> <p>5 of upside down cheese at the bottom sauce on top</p> <p>6 and lots of parmesan.</p> <p>7 A. Mm-hmm.</p> <p>8 Q. Did you write that?</p> <p>9 A. If it's on my Facebook page, yes.</p> <p>10 Q. When you say our version, whom are</p> <p>11 you referring to?</p> <p>12 A. The restaurant itself.</p> <p>13 Q. You're referring to Rosso Uptown?</p> <p>14 A. Yeah. A word, what does it mean, you</p> <p>15 know. If I would say my version of upside down,</p> <p>16 it would be, you know, my restaurant if it's our</p> <p>17 restaurant. I don't get it.</p> <p>18 Q. Were you truthful when you said it</p> <p>19 was our version?</p> <p>20 A. Yeah, it could be from the</p> <p>21 restaurant, yes; why not. If I was teaching them</p> <p>22 something, maybe experimenting, you know.</p> <p>23 Q. I'd like you to keep changing the</p> <p>24 pages until you see like a half pepperoni and a</p> <p>25 half spinach pie.</p>	<p>1 -Michele Tizzano-</p> <p>2 was marked as Plaintiff's Exhibit No.</p> <p>3 17 for identification only, as of</p> <p>4 this date.)</p> <p>5 (Whereupon, an eight-page</p> <p>6 document was marked as Plaintiff's</p> <p>7 Exhibit No. 18 for identification</p> <p>8 only, as of this date.)</p> <p>9 (Whereupon, a two-page document</p> <p>10 was marked as Plaintiff's Exhibit No.</p> <p>11 19 for identification only, as of</p> <p>12 this date.)</p> <p>13 (Whereupon, a ten-page document</p> <p>14 was marked as Plaintiff's Exhibit No.</p> <p>15 20 for identification only, as of</p> <p>16 this date.)</p> <p>17 Q. I'm going to show you what's been</p> <p>18 marked Plaintiff's Exhibit 15.</p> <p>19 Do you know a woman by the name of</p> <p>20 Joanne Starkey (handing)?</p> <p>21 A. (Perusing). Not personally know her;</p> <p>22 but yes, who she is or who she was.</p> <p>23 Q. Who is she?</p> <p>24 A. She was a writer for the New York</p> <p>25 Times.</p>
Page 78	Page 80
<p>1 -Michele Tizzano-</p> <p>2 The second line here says: Happy</p> <p>3 holidays from all of us at Brick.</p> <p>4 You wrote that?</p> <p>5 A. Yes.</p> <p>6 Q. When you say all of us, whom are you</p> <p>7 referring to?</p> <p>8 A. Whoever was in the room.</p> <p>9 Q. You're referring to Rosso Uptown,</p> <p>10 correct?</p> <p>11 A. If it was at Brick, yes.</p> <p>12 Q. Then if you look at the bottom, again</p> <p>13 it says: Happy holidays from all of us at Brick.</p> <p>14 That refers to Rosso Uptown, correct?</p> <p>15 A. We just said that, yes.</p> <p>16 MR. MOSER: Mark these.</p> <p>17 (Whereupon, a two-page document</p> <p>18 was marked as Plaintiff's Exhibit No.</p> <p>19 15 for identification only, as of</p> <p>20 this date.)</p> <p>21 (Whereupon, a two-page document</p> <p>22 was marked as Plaintiff's Exhibit No.</p> <p>23 16 for identification only, as of</p> <p>24 this date.)</p> <p>25 (Whereupon, an 11-page document</p>	<p>1 -Michele Tizzano-</p> <p>2 Q. Let's go to Exhibit 16. Do you know</p> <p>3 an individual by the name of Luke Torrence?</p> <p>4 A. Luke Torrence, no.</p> <p>5 Q. Did you ever tell a member of the</p> <p>6 press that you were the general manager of Rosso</p> <p>7 Uptown?</p> <p>8 A. I might have.</p> <p>9 Q. Why would you tell a member of the</p> <p>10 press that you were the general manager of Rosso</p> <p>11 Uptown?</p> <p>12 A. If they call me and they assume that</p> <p>13 I was and I told them, like I told you before, it</p> <p>14 was to help Massimo.</p> <p>15 Q. When people called the telephone</p> <p>16 number for Rosso Uptown, would you answer the</p> <p>17 phone?</p> <p>18 A. The physical location of the</p> <p>19 restaurant?</p> <p>20 Q. Yes.</p> <p>21 A. If I was there, yes.</p> <p>22 Q. Did you in fact speak to a reporter</p> <p>23 in approximately September of 2017 about Rosso</p> <p>24 Uptown?</p> <p>25 A. 2017, I might have.</p>

20 (Pages 77 to 80)

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<p style="text-align: right;">Page 81</p> <p>1 -Michele Tizzano-</p> <p>2 Q. Do you recall saying any of these</p> <p>3 things to a reporter?</p> <p>4 A. Yes.</p> <p>5 Q. Do you have any reason to believe</p> <p>6 that you didn't say the things that are printed in</p> <p>7 this document?</p> <p>8 A. That I did not?</p> <p>9 Q. Yes. In other words, as you're</p> <p>10 sitting here today, are you saying that you didn't</p> <p>11 say any of the things that are listed in this</p> <p>12 document?</p> <p>13 A. I don't remember the nature of the</p> <p>14 conversation. So maybe yes or maybe not. 2017?</p> <p>15 Q. But you did tell him that you were</p> <p>16 the general manager of Rosso Uptown?</p> <p>17 A. General manager is big way of</p> <p>18 describing what I did over there; if I ever helped</p> <p>19 or if I was there for an hour or two in a week or</p> <p>20 so.</p> <p>21 Q. But you did in fact tell the reporter</p> <p>22 that you were the general manager of Rosso Uptown?</p> <p>23 A. I might have.</p> <p>24 Q. Let's turn to Plaintiff's Exhibit 17.</p> <p>25 Have you ever seen this before (handing)?</p>	<p style="text-align: right;">Page 83</p> <p>1 -Michele Tizzano-</p> <p>2 it up?</p> <p>3 A. No, I told her.</p> <p>4 Q. Let's go to Exhibit 18. Do you</p> <p>5 recognize this (handing)?</p> <p>6 A. (Perusing). Yes.</p> <p>7 Q. Do you recall speaking to Erica</p> <p>8 Marcus about this particular article?</p> <p>9 A. Yes.</p> <p>10 Q. Did she interview you?</p> <p>11 A. I think it was a telephone</p> <p>12 conversation.</p> <p>13 Q. Did you tell her that you were the</p> <p>14 general manager of 11 Zero 50?</p> <p>15 A. In this particular conversation, I</p> <p>16 don't remember.</p> <p>17 Q. If we with look at the second page,</p> <p>18 it says here when request referring to Rosso</p> <p>19 Uptown that: Partners Michael Tizzano and Massimo</p> <p>20 Gammella have brought on consulting executive chef</p> <p>21 Michael Heinlein -- H-E-I-N-L-E-I-N -- to re-boot</p> <p>22 the kitchen.</p> <p>23 Is that correct?</p> <p>24 A. Yes she's referring to my partner</p> <p>25 because Massimo and I are partners Pepe Rosso.</p>
<p style="text-align: right;">Page 82</p> <p>1 -Michele Tizzano-</p> <p>2 A. (Perusing). Mm-hmm, yes.</p> <p>3 Q. When did you see this?</p> <p>4 A. I guess when it came out.</p> <p>5 Q. No, what is this?</p> <p>6 A. The date?</p> <p>7 Q. No, what is this?</p> <p>8 A. Oh, what is it?</p> <p>9 Q. Yes.</p> <p>10 A. It's a review.</p> <p>11 Q. Published by Newsday?</p> <p>12 A. Yes.</p> <p>13 Q. Did you speak with Erica Marcus of</p> <p>14 Newsday?</p> <p>15 A. Yes.</p> <p>16 Q. Did you tell her that you were the</p> <p>17 general manager of Rosso Uptown?</p> <p>18 A. I might have.</p> <p>19 Q. I'm not talking about what you might</p> <p>20 have. I'm talking about when she prints on this</p> <p>21 document and she says general manager Michael</p> <p>22 Tizzano, did she make that up or did you tell her</p> <p>23 that?</p> <p>24 A. I might have told her.</p> <p>25 Q. Did you tell her that or did she make</p>	<p style="text-align: right;">Page 84</p> <p>1 -Michele Tizzano-</p> <p>2 Q. Where was Mr. Heinlein brought to</p> <p>3 re-boot the kitchen?</p> <p>4 A. When or where?</p> <p>5 Q. Where?</p> <p>6 A. At Rosso Uptown when he changed to 11</p> <p>7 Zero 50.</p> <p>8 Q. Did you in fact bring on consulting</p> <p>9 executive chef Michael Heinlein into Rosso Uptown?</p> <p>10 A. Did I bring him in?</p> <p>11 Q. Yes.</p> <p>12 A. I think it was Massimo's decision.</p> <p>13 Q. Who put Massimo in touch with him?</p> <p>14 A. There was a guy that used to work at</p> <p>15 Sysco that recommended Mike Heinlein. And I told</p> <p>16 Massimo I do not like this guy, do not hire him.</p> <p>17 Q. Were you partners with Mr. Gammella</p> <p>18 at Rosso Uptown?</p> <p>19 A. No.</p> <p>20 Q. Did you tell the reporter that wrote</p> <p>21 the article that's listed in this exhibit that you</p> <p>22 were partners with Massimo at Rosso Uptown?</p> <p>23 A. No, it was a short-lived lived</p> <p>24 restaurant. It was open for three months.</p> <p>25 Q. I'm going to show you what's been</p>

21 (Pages 81 to 84)

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<p style="text-align: right;">Page 85</p> <p>1 -Michele Tizzano-</p> <p>2 marked as Plaintiff's Exhibit 19. Did you speak</p> <p>3 with Mr. Torrence about 11 Zero 50 (handing)?</p> <p>4 A. (Perusing). No, I don't think so.</p> <p>5 Q. Did you speak with any reporter about</p> <p>6 the closing of 11 Zero 50?</p> <p>7 A. Yes.</p> <p>8 Q. Do you recall which reporters you</p> <p>9 spoke to?</p> <p>10 A. No, I don't recall, Mr. Moser.</p> <p>11 Q. I want you to take a moment to read</p> <p>12 through this document and please tell me if</p> <p>13 there's anything in here that's incorrect.</p> <p>14 A. (Perusing). Well, it says that the</p> <p>15 restaurant was re-branding itself; that Michael</p> <p>16 Tizzano co-owns the restaurant Massimo Gammella.</p> <p>17 But you have to ask him why he wrote that. Get in</p> <p>18 touch with Mr. Torrence and ask him.</p> <p>19 Q. Did you say the things that are</p> <p>20 quoted as being said by you?</p> <p>21 A. Can you rephrase that?</p> <p>22 Q. Did you tell Luke Torrence that you</p> <p>23 were a co-owner with Massimo Gammella of 11 Zero</p> <p>24 50?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 87</p> <p>1 -Michele Tizzano-</p> <p>2 understand it.</p> <p>3 Q. I'm going to show you what's been</p> <p>4 marked Plaintiff's Exhibit 20.</p> <p>5 Actually, let me go back to Exhibit</p> <p>6 19. What were you mad about?</p> <p>7 A. Because 11 Zero 50 which was the</p> <p>8 third reincarnation of Uptown lived for three</p> <p>9 months. The guy that Massimo hired -- Mike</p> <p>10 Heinlein -- to supervise the kitchen, a new menu</p> <p>11 because it was a new concept, Massimo opened up I</p> <p>12 think it was a Monday and the guy didn't show up</p> <p>13 on Tuesday. He was left with nobody.</p> <p>14 Mr. Moser, I worked two months in the</p> <p>15 kitchen helping Massimo. And in August I think --</p> <p>16 no, maybe in October of 2018 or in August of 2018,</p> <p>17 we were served with Mr. Borrelli's lawsuit. So by</p> <p>18 the time you hire a lawyer and this and that, we</p> <p>19 were left with zero, nothing. I really broke my</p> <p>20 back to help him out with no results whatsoever</p> <p>21 and then decided to close the doors.</p> <p>22 So from August of 2018 to October of</p> <p>23 2018, he lost a lot of money and that was why I</p> <p>24 was mad. Because I think we've been always very</p> <p>25 fair with our employees.</p>
<p style="text-align: right;">Page 86</p> <p>1 -Michele Tizzano-</p> <p>2 Q. So Mr. Torrence if he wrote that,</p> <p>3 he's lying?</p> <p>4 A. You can ask him. Send him a subpoena</p> <p>5 and ask him.</p> <p>6 Q. So in your words he made that up?</p> <p>7 A. It could possibly be. I would assume</p> <p>8 that because I own Pepe Rosso, he must have.</p> <p>9 Q. Can you think of a reason why he would</p> <p>10 just make that up?</p> <p>11 A. I don't know.</p> <p>12 Q. I'm going to point your attention to</p> <p>13 basically the third paragraph where it opens with</p> <p>14 a quote and it says, "We are not sad, we are mad."</p> <p>15 Did you say that?</p> <p>16 A. Yes.</p> <p>17 Q. Did you also say that you were, "Mad</p> <p>18 at a system that does not protect employers, a</p> <p>19 system that allows others to reach into your</p> <p>20 pocket and entitles them to whatever they think</p> <p>21 they are entitled to?"</p> <p>22 A. I certainly did.</p> <p>23 Q. Is that your opinion of the wage laws</p> <p>24 that protect restaurant employees?</p> <p>25 A. Yes. You have to own a restaurant to</p>	<p style="text-align: right;">Page 88</p> <p>1 -Michele Tizzano-</p> <p>2 Q. You think you shouldn't be sued if</p> <p>3 you're fair with employees?</p> <p>4 A. No. Okay, now maybe from a</p> <p>5 conversation -- from a question and now we go to a</p> <p>6 conversation, I don't want to do that. I have my</p> <p>7 opinion.</p> <p>8 Q. Do you think it's enough to just be</p> <p>9 fair with employees?</p> <p>10 A. No. I think it's unfair when you do</p> <p>11 the right thing and then the law gives them an</p> <p>12 upper hand to come and to sue you and meets their</p> <p>13 way of coming, you know, above you.</p> <p>14 Q. How does the law give them an upper</p> <p>15 hand?</p> <p>16 A. We're here now. Right? What are we</p> <p>17 doing here? I'm here defending myself, you know.</p> <p>18 You're asking me questions already for three</p> <p>19 hours. I got to leave my things to come here and</p> <p>20 answer you.</p> <p>21 Q. Why do you say that the employees</p> <p>22 have the upper hand?</p> <p>23 A. Because they can go to somebody like</p> <p>24 you and expose their case and the court maybe can</p> <p>25 give them, you know, a reason and say you know</p>

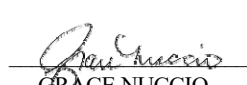
22 (Pages 85 to 88)

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<p style="text-align: right;">Page 89</p> <p>1 -Michele Tizzano-</p> <p>2 what, now pay up Mr. Tizzano.</p> <p>3 Q. The truth is that you and</p> <p>4 Mr. Gammella did not keep proper records of the</p> <p>5 hours that your employees were working; isn't that</p> <p>6 true?</p> <p>7 A. You have to ask my accountant.</p> <p>8 Q. And because you didn't keep proper</p> <p>9 records, you're exposed to lawsuits; isn't that</p> <p>10 true?</p> <p>11 A. Ask my accountant.</p> <p>12 Q. The reason why you have to say that</p> <p>13 you had nothing to do with the management or</p> <p>14 operation of this business is because at least on</p> <p>15 three occasions you swore under oath to a federal</p> <p>16 judge that you had nothing to do with the</p> <p>17 operation of Rosso Uptown?</p> <p>18 A. Yes.</p> <p>19 Q. And you can't go back on that?</p> <p>20 A. I swore that I was never an owner.</p> <p>21 If you can show me concrete evidence that I own it</p> <p>22 legally -- you cannot come here and show me a</p> <p>23 Facebook page, Mr. Moser, when I take pictures and</p> <p>24 --</p> <p>25 Q. So here's my concern: Every single</p>	<p style="text-align: right;">Page 91</p> <p>1 -Michele Tizzano-</p> <p>2 employees at Rosso Uptown?</p> <p>3 A. Mr. Moser, if I was there for an hour</p> <p>4 or two and I saw things not going right, I would</p> <p>5 tell them what to do or how to do it. Does that</p> <p>6 make me an owner of a business?</p> <p>7 Q. Were there any categories of</p> <p>8 employees that you would not correct or give</p> <p>9 advice to when you worked there?</p> <p>10 A. Maybe if he had any drivers on, like</p> <p>11 delivery guys, I had nothing to do with that.</p> <p>12 That was not for me to -- you know, I have no</p> <p>13 expertise in that.</p> <p>14 MR. MOSER: Thank you for your</p> <p>15 time. I have no further questions.</p> <p>16 (Time noted: 12:45 P.M.)</p> <p>17 _____</p> <p>18 MICHELE TIZZANO</p> <p>19</p> <p>20 Subscribed and sworn to</p> <p>21 before me this day</p> <p>22 of , 2022.</p> <p>23</p> <p>24 _____</p> <p>25 NOTARY PUBLIC</p>
<p style="text-align: right;">Page 90</p> <p>1 -Michele Tizzano-</p> <p>2 document that we've seen today suggests that you</p> <p>3 were the manager and owner of this restaurant but</p> <p>4 I haven't seen one document that says otherwise</p> <p>5 and you already told Judge Locke that you don't</p> <p>6 have any other documents that show otherwise. So</p> <p>7 can you please explain to me why you still say</p> <p>8 that you had nothing to do with the operation of</p> <p>9 this business?</p> <p>10 A. Because I didn't. And when we</p> <p>11 started the deposition, when you say manager and I</p> <p>12 told you before managing, it's a vast array of</p> <p>13 things. If you think that being in a place and</p> <p>14 helping Massimo -- maybe directing a waiter or</p> <p>15 tasting tomato sauce or making a pizza -- is</p> <p>16 owning a business, then I owned it. But legally I</p> <p>17 don't own it. If I was there to help him out, I</p> <p>18 don't think that makes me an owner. If I helped</p> <p>19 him in the kitchen, literally sweating just to</p> <p>20 help him out when the guy walked out of it, then</p> <p>21 you tell me if that makes me an owner. You will</p> <p>22 have to find -- I guess. I'm sure you did in the</p> <p>23 past.</p> <p>24 Q. I know that you're saying you weren't</p> <p>25 an owner. Are you saying that you didn't direct</p>	<p style="text-align: right;">Page 92</p> <p>1</p> <p>2 I N D E X</p> <p>3 EXAMINATION BY PAGE</p> <p>4 MR. MOSER 04</p> <p>5</p> <p>6</p> <p>7</p> <p>8 E X H I B I T S</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>PLF'S</p> <p>FOR ID DESCRIPTION Pg Ln</p> <p>1 Six-page document 39 04</p> <p>2 Five-page document 39 08</p> <p>3 Four-page document 39 12</p> <p>4 One-page document 39 16</p> <p>5 Six-page document 39 20</p> <p>6 Three-page document 39 24</p> <p>7 One-page document 40 04</p> <p>8 Seven-page document 51 05</p> <p>9 19-page document 58 05</p> <p>10 Five-page document 63 20</p> <p>11 Six-page document consisting</p> <p>12 of long pages 64 19</p> <p>13 One-page document 69 10</p> <p>(Index continued on the next page.)</p>

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<p style="text-align: center;">CONTINUED INDEX</p> <p style="text-align: center;">CONTINUED EXHIBITS</p> <p>PLF'S</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;"></th> <th style="width: 60%;">FOR ID DESCRIPTION</th> <th style="width: 10%;">Pg</th> <th style="width: 10%;">Ln</th> </tr> </thead> <tbody> <tr> <td>13</td> <td>One-page document</td> <td>69</td> <td>14</td> </tr> <tr> <td>14</td> <td>Eight-page document</td> <td>69</td> <td>18</td> </tr> <tr> <td>15</td> <td>Two-page document</td> <td>78</td> <td>17</td> </tr> <tr> <td>16</td> <td>Two-page document</td> <td>78</td> <td>21</td> </tr> <tr> <td>17</td> <td>11-page document</td> <td>78</td> <td>25</td> </tr> <tr> <td>18</td> <td>Eight-page document</td> <td>79</td> <td>05</td> </tr> <tr> <td>19</td> <td>Two-page document</td> <td>79</td> <td>09</td> </tr> <tr> <td>20</td> <td>Ten-page document</td> <td>79</td> <td>13</td> </tr> </tbody> </table> <p style="text-align: center;">REQUESTS AND DOCUMENT PRODUCTION</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;"></th> <th style="width: 10%;">Pg</th> <th style="width: 10%;">Ln</th> <th style="width: 70%;"></th> </tr> </thead> <tbody> <tr> <td>55</td> <td>10</td> <td></td> <td>Document</td> </tr> </tbody> </table> <p style="text-align: center;">RULINGS</p> <p style="text-align: center;">NONE</p>		FOR ID DESCRIPTION	Pg	Ln	13	One-page document	69	14	14	Eight-page document	69	18	15	Two-page document	78	17	16	Two-page document	78	21	17	11-page document	78	25	18	Eight-page document	79	05	19	Two-page document	79	09	20	Ten-page document	79	13		Pg	Ln		55	10		Document	<p>ERRATA SHEET FOR: MICHELE TIZZANO, PRO SE</p> <p>MICHELE TIZZANO, PRO SE, being duly sworn, deposes and says: I have reviewed the transcript of my proceeding taken on 06/03/2022. The following changes are necessary to correct my testimony.</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;"></th> <th style="width: 10%;">PAGE</th> <th style="width: 10%;">LINE</th> <th style="width: 10%;">CHANGE</th> <th style="width: 60%;">REASON</th> </tr> </thead> <tbody> <tr><td>6</td><td>---</td><td>---</td><td>---</td><td>---</td></tr> <tr><td>7</td><td>---</td><td>---</td><td>---</td><td>---</td></tr> <tr><td>8</td><td>---</td><td>---</td><td>---</td><td>---</td></tr> <tr><td>9</td><td>---</td><td>---</td><td>---</td><td>---</td></tr> <tr><td>10</td><td>---</td><td>---</td><td>---</td><td>---</td></tr> <tr><td>11</td><td>---</td><td>---</td><td>---</td><td>---</td></tr> <tr><td>12</td><td>---</td><td>---</td><td>---</td><td>---</td></tr> <tr><td>13</td><td>---</td><td>---</td><td>---</td><td>---</td></tr> <tr><td>14</td><td>---</td><td>---</td><td>---</td><td>---</td></tr> <tr><td>15</td><td>---</td><td>---</td><td>---</td><td>---</td></tr> <tr><td>16</td><td>---</td><td>---</td><td>---</td><td>---</td></tr> <tr><td>17</td><td>---</td><td>---</td><td>---</td><td>---</td></tr> <tr><td>18</td><td>---</td><td>---</td><td>---</td><td>---</td></tr> <tr><td>19</td><td>---</td><td>---</td><td>---</td><td>---</td></tr> <tr><td>20</td><td>---</td><td>---</td><td>---</td><td>---</td></tr> <tr><td>21</td><td>---</td><td>---</td><td>---</td><td>---</td></tr> <tr><td>22</td><td>---</td><td>---</td><td>---</td><td>---</td></tr> </tbody> </table> <p>Witness Signature: _____</p> <p>Subscribed and sworn to, before me</p> <p>this ___ day of _____, 20 __.</p> <p>_____ (NOTARY PUBLIC) MY COMMISSION EXPIRES</p>		PAGE	LINE	CHANGE	REASON	6	---	---	---	---	7	---	---	---	---	8	---	---	---	---	9	---	---	---	---	10	---	---	---	---	11	---	---	---	---	12	---	---	---	---	13	---	---	---	---	14	---	---	---	---	15	---	---	---	---	16	---	---	---	---	17	---	---	---	---	18	---	---	---	---	19	---	---	---	---	20	---	---	---	---	21	---	---	---	---	22	---	---	---	---
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<p style="text-align: center;">CERTIFICATE</p> <p>I, GRACE NUCCIO, a Shorthand and Notary Public of the State of New York, do hereby certify:</p> <p>That, MICHELE TIZZANO, the witness whose examination is hereinbefore set forth, was duly sworn, and that such examination is a true record of the testimony given by such witness.</p> <p>I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.</p> <div style="text-align: center;">  GRACE NUCCIO </div>																																																																																																																																							

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